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Briefing on How To Use the Federal Register
For information on briefing in Washington, DC, see
announcement on the inside cover of this issue.



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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

- WHEN:** June 28, at 9:00 a.m.,
WHERE: Office of the Federal Register,
 First Floor Conference Room,
 1100 L Street NW., Washington, DC.
- RESERVATIONS:** 202-523-5240.

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Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 722]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona lemons that may be shipped to domestic markets during the period from June 17 through June 23, 1990. Consistent with program objectives, such action is needed to balance the supplies of fresh lemons with the demand for such lemons during the period specified. This action was recommended by the Lemon Administrative Committee (Committee), which is responsible for local administration of the lemon marketing order.

DATES: Regulation 722 (7 CFR part 910) is effective for the period from June 17 through June 23, 1990.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture (Department), Room 2524-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 910 (7 CFR part 910), as amended, regulating the handling of lemons grown in California and Arizona. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 lemon producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

The California-Arizona lemon industry is characterized by a large number of growers located over a wide area. The production area is divided into three districts which span California and Arizona. The largest proportion of lemon production is located in District 2, Southern California, which represented 57 percent of total production in 1988-89. District 3 is the desert area of California and Arizona and represented 31 percent of 1988-89 production; and District 1 in Central California represented 12 percent. The Committee's estimate of 1989-90 production is 39,324 cars (one car equals 1,000 cartons at 38 pounds net weight each), as compared with 41,759 cars during the 1988-89 season.

The three basic outlets for California-Arizona lemons are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a

preferred market for California-Arizona lemons. The Committee estimates that about 42 percent of the 1989-90 crop of 39,324 cars will be utilized in fresh domestic channels (16,500 cars), compared with the 1988-89 total of 16,500 cars, about 41 percent of the total production of 41,759 cars in 1988-89. Fresh exports are projected at 22 percent of the total 1989-90 crop utilization compared with 19 percent in 1988-89. Processed and other uses would account for the residual 36 percent compared with 39 percent of the 1988-89 crop.

Volume regulations issued under the authority of the Act and Marketing Order No. 910 are intended to provide benefits to growers. Growers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of lemons in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the lemon marketing order are required by the Committee from handlers of lemons. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance grower revenue. Prices for lemons tend to be relatively inelastic at the grower level. Thus, even a small variation in shipments can have a great impact on prices and grower revenue. Under these circumstances, strong arguments can be advanced as to the benefits of regulation to growers, particularly smaller growers.

At the beginning of each marketing year, the Committee submits a marketing policy to the U.S. Department

of Agriculture (Department) which discusses, among other things, the potential use of volume and size regulations for the ensuing season. The Committee, in its 1989-90 season marketing policy, considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Rodriguez. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on June 12, 1990, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended that 375,000 cartons is the quantity of lemons deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1989-90 marketing policy. This recommended amount is 20,000 cartons below that estimated in the July 11, 1989, tentative shipping schedule.

During the week ending on June 9, 1990, shipments of lemons to fresh domestic markets, including Canada, totaled 382,000 cartons compared with 398,000 cartons shipped during the week ending on June 10, 1989. Export shipments totaled 192,000 cartons compared with 159,000 cartons shipped during the week ending on June 10, 1989. Processing and other uses accounted for 296,000 cartons compared with 129,000 cartons shipped during the week ending on June 10, 1989.

Fresh domestic shipments to date this season total 13,951,000 cartons compared with 13,839,000 cartons shipped by this time last season. Export shipments total 6,575,000 cartons compared with 7,067,000 cartons shipped by this time last season. Processing and other use shipments total 10,877,000 cartons compared with 14,739,000 cartons shipped by this time last season.

For the week ending on June 9, 1990, regulated shipments of lemons to the fresh domestic market were 382,000

cartons on an adjusted allotment of 422,000 cartons which resulted in net undershipments of 40,000 cartons. Regulated shipments for the current week (June 10 through June 16, 1990) are estimated at 385,000 cartons on an adjusted allotment of 432,000 cartons. Thus, undershipments of 47,000 cartons could be carried over into the week ending on June 23, 1990.

The average f.o.b. shipping point price for the week ending on June 9, 1990, was \$13.58 per carton based on a reported sales volume of 383,000 cartons compared with last week's average of \$13.44 per carton on a reported sales volume of 350,000 cartons. The season average f.o.b. shipping point price to date is \$13.44 per carton. The average f.o.b. shipping point price for the week ending on June 9, 1989, was \$13.58 per carton; the season average f.o.b. shipping point price at this time last season was \$11.93 per carton.

The National Agricultural Statistics Service indicates a 1989-90 California-Arizona lemon crop of about 38,800,000 cartons, three percent less than the 1988-89 utilized production total of 40,000,000 cartons. However, 1989-90 fresh domestic use may total 16,500,000 cartons, about equal to that in 1988-89, as indicated in the Committee's schedule of weekly shipments.

The Department's Market News Service reported that, as of June 12, overall demand for California-Arizona lemons was "fairly light" and the market was "about steady" for all grades and sizes of lemons. At the meeting, most Committee members characterized demand as fair to good. One Committee member reported that the demand on first grade 140's and larger-sized lemons remains good. Demand is fair for small-sized lemons with supplies of some small-sized lemons exceeding demand. In addition, some price discounting occurred on fruit shipped from District 1. Committee members and observers discussed different levels of regulation as well as open movement. The Committee unanimously recommended volume regulation for the period from June 17 through June 23, 1990.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the 1989-90 season average fresh on-tree price is estimated at \$8.63, 118 percent of the projected season average fresh on-tree parity equivalent price of \$7.50 per carton. The 1988-89 season average fresh equivalent on-tree price for California-Arizona lemons was \$7.27 per carton, 105 percent of the 1988-89 parity equivalent price.

Limiting the quantity of lemons that may be shipped during the period from

June 17 through June 23, 1990, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of lemons to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until June 12, 1990, and this action needs to be effective for the regulatory week which begins on June 17, 1990. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

PART 910—[AMENDED]

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.722 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.722 Lemon Regulation 722.

The quantity of lemons grown in California and Arizona which may be handled during the period from June 17 through June 23, 1990, is established at 375,000.

Dated: June 13, 1990.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable
Division.

[FR Doc. 90-14055 Filed 6-14-90; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 916 and 917

[Docket No. FV-90-119]

Nectarines and Fresh Pears, Plums and Peaches Grown in California; Amendment of Size, Maturity, Container and Container Marking Requirements and Change in Maturity Variance Procedures for the 1990 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes size, maturity, container and container marking requirements and maturity variance procedures for fresh nectarines, plums and peaches grown in California. The rule adds several new varieties of nectarines, plums, and peaches to variety-specific size requirements, and deletes other varieties from the variety specific size requirements of the three commodities. Deleted varieties are subject to the minimum size requirements for non-listed varieties. This rule changes the size requirement for the Black Diamond plum variety. This rule also adds to container marketing requirements a list of tray-pack sizes to be marked on containers of nectarines and peaches when packed in containers other than tray-packs. This rule adds to the plum regulations a list of four-basket-crate plum size designations, by variety, to be marked on plum containers when plums are not packed in four-basket-crates and modifies the four-basket crate list by adding another size designation. The final rule also extends use of a 24-pound container size for plums through the 1990 marketing season. Additionally, this final rule revises maturity requirements for certain nectarine and peach varieties, and adds maturity requirements for new varieties of nectarines, plums and peaches. Finally, the rule authorizes a minor procedural change to hasten the maturity variance procedures for nectarines, plums and peaches. With the exception of the proposal to allow the 24-pound plum

container, the changes were unanimously recommended by the Nectarine Administrative Committee and the Plum and Peach Commodity Committees (hereinafter referred to as the nectarine committee, plum committee and peach committee, respectively, and collectively as the committees). These rules are designed to provide handlers with more marketing flexibility, more accurately define the size and maturity characteristics of the resulted fruit, improve the maturity variance procedures and promote the marketing of each of the fruits.

EFFECTIVE DATE: June 15, 1990.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: This final rule has been reviewed by the Department under Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule under criteria contained therein.

The rule is issued under the marketing agreements, as amended, and Marketing Orders 916 and 917, as amended, (7 CFR Parts 916 and 917), regulating the handling of nectarines, pears, peaches and plums grown in California. The agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act. Shipments of these fruits are regulated by container and pack under Nectarine Regulation 8 (7 CFR 916.350), Peach Regulation 8 (7 CFR 917.442), and Plum Regulation 17 (7 CFR 917.454), as amended on July 3, 1989 (54 FR 27860). Shipments of nectarines, peaches and plums are regulated by grade and size under Nectarine Regulation 14 (7 CFR 916.356), Peach Regulation 14 (7 CFR 917.459) and Plum Regulation 19 (7 CFR 917.460), as amended and published in the Federal Register on July 3, 1989 (54 FR 27861).

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly

or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 465 handlers are subject to regulation under the marketing orders for California nectarines, plums and peaches. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.2) as those having annual receipts of less than \$3,500,000. There are about 1,720 producers of nectarines, plums and peaches in California. Small agricultural producers have been defined by the SBA as those having annual receipts of less than \$500,000. The majority of these handlers and producers may be classified as small entities.

Notice of this action was published as a proposed rule in the Federal Register (54 FR 11592) on March 29, 1990. Comments were received from Ken Barbic, Vice President for Stone Fruit, Sun World, Bakersfield, California; the Law Firm of Thomas E. Campagne, Fresno, California; F.T. Elliott, Ivanhoe, California; Jonathan W. Field, manager of the nectarine, peach and plum marketing order committees, Sacramento, California; Dan J. Gerawan, of Gerawan Co., Inc., Reedley, California; and James A. Moody, Coordinator of Farmers Alliance for Improved Regulation, Washington, DC, and John R. Olive, sales manager of Wileman Bros. & Elliott Inc., Cutler, California. Their comments concerned the sizing of the Black Diamond plum variety, the May Glo nectarine crop in the Coachella Valley, the 24-pound plum pack, the weight counts of the four new plum varieties added to the 8-pound sample table, the proposed maturity requirements, color chip viability, and general statements regarding Marketing Orders 916 and 917. The comments are discussed below.

Attorneys Thomas Campagne and James Moody filed comments in which they referenced many of the major issues of two current 15(A) Administrative petitions filed with the U.S. Department of Agriculture (Department) by three of Mr. Campagne's clients. The comments included contentions that: size and maturity regulations are used by the committees to control volume; "well-matured" has not been defined, is not uniformly applied, and has never been studied by the committee with regard to over ripe shipments; maturity

regulations waste 15-20 percent of the crops; the nectarine color chips are arbitrary and capricious; the nectarine color standards are oriented toward red varieties and discriminate against yellow varieties; the variance procedure reduces the authority of the inspection service; variances are granted to members and friends of committee members, but are denied to others; and the Department has not exercised proper oversight of the program in previous rulemakings. These comments are without merit and have been addressed in previous interim and final rules published in the *Federal Register* (53 FR 19218, 19226 and 19234) May 27, 1988, and (54 FR 12419) March 27, 1989, respectively. Further, these comments, in most cases, do not apply to specific changes proposed in this rulemaking. However, those comments which relate directly to changes proposed for the 1990 season are addressed herein.

Mr. Campagne also referred to the two 15(A) petitions filed by his clients currently under review in the Department as well as the Decision and Order, issued May 18, 1989, in AMA Docket Nos. 916-1, 916-2, 917-2 and 917-3 (Case 1), and the Preliminary and Tentative Findings of Fact on AMA Docket Nos. 916-3 and 917-4 (Case 2) issued February 16, 1990, by a Departmental Administrative Law Judge (ALJ). The May 18, 1989, Decision and Order has been appealed and is currently being reviewed by the Department's Judicial Officer (JO). The second proceeding is currently in the briefing stage. There has been no final agency decision in either of these proceedings. Thus, neither the May 18, 1989, initial decision in Case 1, nor the preliminary findings of February 16, 1990, in Case 2 are binding upon this rulemaking. It has been and continues to be the position of the AMS that the regulations implemented under marketing orders 916 and 917 are in accordance with law.

Inspected shipments of California nectarines, plums and peaches for the 1989 season totalled 17,511,800, 15,021,800 and 14,529,400 packages, respectively. They were marketed primarily in the fresh market.

Because these regulations do not change substantially from season to season, they have been issued on a continuing basis subject to amendment, modification or suspension as may be recommended by the applicable committee and approved by the Secretary.

The nectarine committee, plum committee and the peach committee unanimously recommended, with one exception, amending size and maturity

requirements, adding container marking requirements and making a minor change in maturity variance procedures. Extension of the use of the 24-pound plum pack was disapproved by a plum committee vote of 11 to 1. However, after evaluating all available information regarding this issue, the U.S. Department of Agriculture (Department) has decided that continued use of the 24-pound plum container should be approved for the 1990 marketing season. This final rule is based upon all three committees' recommendations, on information submitted by these committees and their respective subcommittees, on the comments received, and on other available information. The changes reflect crop and market conditions experienced in 1989 and preceding years. Similar crop and market conditions are expected in 1990.

Size Requirements

This final rule amends size requirements for nectarines, plums and peaches by adding several new varieties now produced in commercially significant quantities to variety-specific (named variety) size requirements, and by deleting from variety-specific size requirements certain varieties no longer produced in significant quantities. The size requirements for named varieties and non-listed varieties not mentioned in this rulemaking will not be changed for the 1990 season.

Variety-specific size requirements are implemented when a variety is produced in commercially significant quantities. Such quantity is considered by the committees to be total shipments of a variety exceeding 10,000 packages during a season. In making this volume determination, individual consumer packages weighing 15 pounds net weight or less are converted to 25 or 28 pound equivalent containers. Nectarine and peach equivalent packages are based on 25-pound packages. Plum equivalent packages are based on 28-pound packages. For instance, two individual consumer nectarine packages of 11 pounds and 14 pounds would be counted as one 25-pound package of the fruit. When individual consumer packages of plums weighing 15 pounds or less are shipped, the smaller packages would be considered together as 28-pound packages. For instance, two 14-pound packages of plums would be counted as one 28-pound package.

Nectarine, peach and plum varieties that exceeded 10,000 shipped packages for the first time during the 1989 season are listed in the proposed regulations below. These varieties are regulated

under variety-specific size requirements for each fruit.

When a variety is no longer produced in significant quantities—which the committees have determined to be less than 5,000 packages during a season—it is removed from the variety-specific size requirement list. During the 1989 season the nectarine, peach and plum varieties specified below were not produced in quantities significant enough to warrant variety-specific size coverage. Thus, these varieties are removed from their respective variety-specific size requirement lists for the 1990 season. However, these varieties are subject to minimum size requirements for non-listed varieties because, in combination with other varieties of the fruit, they are produced in quantities significant enough to warrant size coverage. The size requirements established for non-listed varieties are less restrictive than those established for listed varieties, but help provide retailers and consumers with the fruit they prefer. The 10,000 and 5,000 package quantities used in making these determinations have been used in prior seasons.

For nectarines, the variety-specific size requirements and non-listed size requirements are specified in paragraphs (a)(2) through (a)(8) of § 916.356 as amended July 3, 1989 (54 FR 27861). To implement the nectarine committee's unanimous recommendations for this action, paragraph (a)(5)(i) of § 916.356 is amended to establish variety-specific size requirements for five nectarine varieties that were produced in commercially significant quantities of more than 10,000 packages for the first time during the 1989 season. These varieties are Nect-5, One One, Summer Star, Tasty Gold, and 32-79-22.

The nectarine committee also unanimously recommended that four varieties be deleted from variety-specific size requirements because their production was less than 5,000 packages during the 1989 season. This rule removes Early Star, Granderli, June Grand and Star Bright varieties from the nectarine variety-specific list and makes them subject to one of the non-listed variety size requirements specified in paragraphs (a)(6) through (a)(8) of § 916.356.

For peaches, the variety-specific size requirements and non-listed size requirements are specified in paragraphs (a)(2) through (a)(5) and in paragraphs (b) and (c) of § 917.459 as amended July 3, 1989 (54 FR 27861). The peach committee unanimously recommended that variety-specific size requirements be established for ten

peach varieties. Paragraph (a)(4) of § 917.459 is amended to include new varieties David Sun, Early May Crest, June Sun, Kingscrest, Sierra Crest, Snow Flame and Summer Crest; paragraph (a)(5) would be amended to include new varieties Jefferson Sun, John Henry and Zee Lady.

The peach committee also unanimously recommended that six varieties be deleted from variety-specific size requirements because the production of these varieties was less than 5,000 packages during the 1989 season. This rule removes the Fortyniner, Franciscan, Redhaven, Sun Lady, Toreador and Willie Red varieties from the peach variety-specific list and makes them subject to the non-listed variety size requirements as specified in paragraphs (b) and (c) of § 917.459.

For plums, the variety-specific size requirements and non-listed size requirements are specified in paragraphs (b) and (c) of § 917.460 as amended July 3, 1989 (54 FR 28761). To implement the plum committee's unanimous recommendation for this action, paragraph (b) of § 917.460 is amended to establish variety-specific size requirements for Aleta Rose, Black Flame, Black Premium and "5-100" plum varieties. These varieties were produced in commercially significant quantities for the first time during the 1989 season.

Mr. Field, commenting on behalf of the plum committee, pointed out that an incorrect maximum weight count (54 plums per 8-pound sample) was listed in the proposed rule for three of the four new varieties. This was an inadvertent error. The correct maximum number of plums per eight-pound sample recommended by the plum committee was 67 for Aleta Rose, 63 for Black Flame, and 56 for the "5-100" variety. The revised weight counts are, in effect, relaxations from that in the proposed rule and are adopted in this final rule, as recommended by the plum committee.

The plum committee also unanimously recommended that three varieties be deleted from the plum variety-specific size requirements because their production was less than 5,000 packages during the 1989 season. This rule removes Andy's Pride, King James and Rosa Ann varieties from the plum variety-specific list and makes them subject to the non-listed variety size requirements specified in paragraph (c) of § 917.460.

Currently, handlers cannot ship Black Diamond plums unless they are of a size that an 8-pound sample contains no more than 59 plums. However, the Black Diamond variety is similar in size and shape to the Friar plum variety which has a size requirement of no more than

56 plums per 8-pound sample. Both of these varieties have a height-to-diameter ratio of .85. Thus, the Plum Size Subcommittee unanimously recommended on October 11, 1989, and the plum committee concurred unanimously, that the minimum size requirement for the Black Diamond variety should be changed to 56 plums per 8-pound sample. Ken Barbic submitted a comment supporting this action. He stated that the Black Diamond variety, in addition to having the same shape and size as the Friar plum variety, also has approximately the same maturity date, and thus would be marketed at the same time as the Friar plum variety.

The nectarine committee unanimously recommended extending, for the 1990 season, provisions of an interim final rule published April 27, 1989 (54 FR 18095) which relaxed variety-specific size requirements for early shipments of May Glo variety nectarines from 96 size to 108 size. That action amended paragraph (a)(2) of § 916.356 to include shipments of the May Glo variety at the reduced size effective April 28, 1989, through May 5, 1989, because May Glos grown under desert conditions in the Coachella Valley of California do not develop to normal size levels for that variety. Information from Mr. Field was received during the comment period indicating that the 1990 May Glo crop in the Coachella Valley was a near total loss because of a winter freeze, and that the relaxation would not be needed. Hence, this proposal is not adopted.

Mr. Campagne commented that since 1980 the size regulations have been used for the improper purpose of volume control. The proposed rule for the 1990 season did not recommend increasing the size requirements for any listed variety of nectarines, plums and peaches. The proposal merely recommended adding several new varieties now produced in commercially significant quantities to variety-specific size requirements and deleting certain varieties no longer produced in significant quantities.

It is the position of the Department that minimum size requirements are needed to assure that the fresh nectarines, plums and peaches provided to the fresh markets have the characteristics demanded by consumers. Information continues to indicate that fruit small in size does not provide satisfaction to the consumers, does not encourage repeat purchases, nor does it benefit the market. Thus, any size requirements adopted are intended to foster repeat purchases and maintain consumer satisfaction. Mr. Campagne's comment that size regulations are

merely for the purpose of volume controls are thus denied.

The addition of several new varieties of nectarines, peaches and plums to the variety-specific size requirements, and the removal of certain other varieties from those requirements, are not detrimental to small entities. These changes are expected to help the respective commodity industries to provide the sizes of fruit that are desired in fresh markets. Such actions are beneficial in maintaining current markets and developing new ones.

Container Marking Requirements

Section 916.350(a)(1)(iii) for nectarines and § 917.442(a)(3)(iii) for peaches, as amended July 3, 1989 (54 FR 27857), specify that the size designations of these fruit, loose-filled or tight-filled, in any container shall be marked according to the number of fruit when packed in molded forms (tray-packs) in No. 22D standard lug boxes and in accordance with standard pack requirements.

Both the nectarine and peach committees unanimously recommended that a table listing the tray-pack sizes and corresponding ranges of the numbers of fruit per 16-pound sample be included in the container marking requirements. This provides greater specificity in the marking requirements and aids inspectors in determining whether containers are properly marked as to size. Thus, this rule adds to paragraph (a)(1)(iv) of § 916.350 a new sub-paragraph and table listing the tray-pack sizes and corresponding ranges of the numbers of nectarines per 16-pound sample. Likewise, this rule adds to paragraph (a)(3)(iv) of § 917.442 a new sub-paragraph and table listing the tray-pack sizes and corresponding ranges of the numbers of peaches per 16-pound sample.

Section 917.454(a)(4)(ii) specifies that the size of plums in loose-filled or tight-filled containers shall be marked in accordance with "four-basket-crate equivalent" designations. Four-basket-crate equivalents are based on the arrangement of the fruit in the top layer of an 8-pound box. For example, a "2x3" designation means that the top layer of fruit contains four sections (baskets) of two rows with three plums in each row; a "3x3" designation means four sections of three rows with three plums in each row. Rounder (or "taller") plums pack more to the crate than flatter (or "squatter") varieties of equal diameter. However, the rounder varieties weigh more and therefore have a lower 8-pound numerical count than the flatter varieties. Therefore, this rule adds to § 917.454(a)(4) an "Equivalent

Plum Sizes" table that lists the sizes of plums in loose-filled or tight-filled containers that are marked in accordance with "four-basket-crate equivalent" designations. While four-basket-crate containers are no longer used, the terminology continues to be used by handlers to indicate plum sizes.

The Plum Size Subcommittee unanimously recommended, and the plum committee unanimously concurred, that the Equivalent Plum Size table included in the regulations (as discussed immediately above) include a column to account for large plums that fall between current "2x2" and "2x3" size designations. Thus, a column is added for a new size designation which packs two rows of alternating two and three columns of plums, and is designated "2x2x3." This column is added because the spread between the "2x2" and "2x3" sizes is greater than that between any of the other sizes listed in the table. Size "2x2x3" will accommodate handlers of large plums who need a more accurate representation of large plums now being packed. Because larger plums command higher prices, this new designation will prove valuable to plum shippers in 1990. The maximum number of plums in 8-pound samples for the proposed "2x2x3" size configuration is found in the second column of the Equivalent Plum Size table under § 917.454(a)(4)(ii). This change provides for greater specificity in the marking requirements and will aid inspectors in determining whether containers are properly marked as to size.

The plum committee recommended that equivalent plum sizes for new varieties not listed individually on the chart be based on each variety's characteristic shape. These proposed additional designations are listed under "All Other Varieties" at the bottom of the "Equivalent Plum Sizes" table in § 917.454(a)(4)(ii), as shown in the regulatory language below.

Mr. Campagne commented that the plum container marking requirements are meant to confuse the industry. The "four-basket-crate-designations" are traditional designations that have been used for many years and are known and understood throughout the industry. While there are discussions within the industry regarding changes in this terminology, an acceptable alternative system has yet to be developed.

Mr. Campagne recommended a more simplified approach, stating that buyers specify either small, medium or large sizes when ordering plums. Given the diversity of plum shapes and sizes, such an approach would not adequately

describe the sizes of plums in a container.

Mr. Campagne commented that publication of the "equivalency table" is part of a plum committee plan to eventually eliminate smaller sized plums. He speculated that next season the table "will be modified in some manner to eliminate smaller sized plums." However, Mr. Campagne offers no evidence to support such a statement. The plum size equivalency table is being included in the regulations to provide greater specificity in marking requirements and to aid inspectors in determining whether containers are properly marked as to size. No further changes in plum size regulations would be implemented without justification and adherence to appropriate rulemaking procedures. Mr. Campagne's comments are therefore denied.

Thus, the addition to the container marking requirements of equivalent tray-pack designations on packages of nectarines and peaches, and equivalent four-basket crate designations on packages of plums, as specified in this final rule, will increase the efficiency of handling these fruits in the marketplace. These changes will not result in additional marketing costs to the industries.

Container Requirements

In May 1989, one handler requested that the plum committee recommend the test marketing of plums packed in 24-pound net weight, volume-filled containers for the 1989 marketing year. These containers are the same length and width as the 28-pound net weight containers currently used by the industry, but are 5¼ inches deep rather than 6½ inches deep. According to the handler, a buyer on the east coast of the United States prefers the smaller containers because that size container reduced handling costs and enhanced displays of the fruit in stores. After considerable debate, the committee rejected the handler's request. However, the Department authorized the use of 24-pound plum containers for the 1989 marketing season in an interim final rule on June 9, 1989 (54 FR 24667), and in a final rule on August 30, 1989 (54 FR 35867).

The Plum Packaging Subcommittee met in October to review the same request for the 1990 season. After considering a plum committee report on use of the 24-pound container during the 1989 season, the subcommittee voted not to approve the request. In November, the issue was again considered by the plum committee. After lengthy debate, the committee failed to recommend use of the 24-pound container for the 1990

marketing season. It was the consensus of committee members that justification for the new container size was not sufficient to warrant changing the longstanding industry policy of standardizing container sizes. Some committee members believed that reduced handling costs and enhanced displays, as described by the handler, were not readily apparent in the 1989 season and therefore were not reason enough to warrant a new container size for the 1990 marketing year. Most committee members contended that if an exception was made in this case, a precedent would be established that would require approval of future requests to use other sized containers. It was also the consensus of the plum committee members that the use of different sized containers would lead to price confusion in the marketplace.

The handler contended that there was no price confusion when the 24-pound container was used in 1989 because there was only one buyer and because a limited quantity shipped. The handler contended that unless the buyer's conditions are met, the buyer will purchase plums from sources outside California.

The Department carefully considered the votes of the committee, the differing viewpoints of the individual committee members, information supplied by the handler, and other available information. The approval of the 24-pound net weight container for the 1989 season did not result in a proliferation of handler requests for different sized containers, nor was there evidence of disruption within the marketplace. Three comments were received from Messrs. Gerawan, Moody and Campagne supporting this proposed change in container size for the 1990 marketing season. No new information in opposition was introduced. After analyzing all of the information, the Department believes that the 24-pound container authorized for 1989 should again be authorized for the 1990 season. This action will allow handlers to take advantage of available additional marketing opportunities.

Maturity Requirements

Maturity requirements established under these marketing orders are intended to provide tree fruit that better meet customer preferences. Over the years, consumers have indicated that they prefer fruit that is sweet and flavorful. To help ensure that fruit reaching the marketplace is well-matured, the maturity subcommittees and the inspection service inspectors meet after each harvest season to

review surface color maturity guides and other tests used in the previous season and recommend appropriate changes for the following season. Any changes in maturity guides are recommended to the respective nectarine, peach and plum committees. A short, descriptive statement serves as the maturity guide for each plum variety. The determination of which color chip will apply to each variety is based upon careful analysis, usually over several seasons, by the inspection service and the maturity subcommittees of the nectarine, peach and plum committees.

A color chip designation for any particular nectarine and peach variety, or maturity guide for a plum variety, may be changed during the course of a season through the maturity variance process. The nectarine, peach and plum committees recommended that the maturity assignments for their respective fruit varieties, in place at the beginning of the 1989 season, be carried over the 1990 season with certain exceptions.

Three of the 1989 season variance requests resulted in changes in the color chip designations for the Grand Stan to color chip F, Early May to color chip F, and Tasty Free to color chip J. The committee recommended that these designations be adopted for those varieties for the 1990 season. This final rule adopts these varietal designations for the 1990 season because experience during the 1989 season indicated that these are considered to be the appropriate designations in determining whether these varieties have reached the well-matured state.

Variance requests during the 1989 season prompted the nectarine committee to recommend the addition of "supervisor discretion" to the maturity designations of four varieties of nectarines. Those requests were based on conditions arising during the 1989 season which prevented the four varieties from attaining their expected ground color as each reached the well-matured standard. It is anticipated that the same conditions may continue in the 1990 season.

Mr. Campagne inquired about the parameters of "supervisor discretion." The term "supervisor discretion" provides inspection service supervisors with the authority to certify that a particular lot of a variety is well-matured, based on factors in addition to ground color. Under "supervisor discretion," such factors as fruit shape, firmness, and soluble solids may be considered by inspection service supervisors in their evaluation of fruit maturity. Therefore, this rule designates the words "or supervisor discretion" to

be added to the following varieties and color chip assignments for the 1990 season—Bob Grand—L, Flamekist—L, Ruby Grand—J, and Son Red—L. The addition of "supervisor discretion" will allow for additional flexibility and oversight in order to provide an appropriate measure of the well-matured standard for those varieties of nectarines.

For the same reasons, this rule also designates that the newly listed peach variety "Sprague Last Chance" and the newly listed plum varieties "Black Gold" and "Black Torch" also include "supervisor discretion" as part of their maturity assignment. These recommendations were made by the peach and plum committees respectively. These actions will provide the additional flexibility and oversight of the maturity determination process needed to determine the proper maturity assignments for these three newly listed varieties.

In addition, this rule assigns maturity guides to new varieties for which guides have not been previously specified. Based on inspection service observations and recommendations, the nectarine committee unanimously recommended that the following two varieties and color chip maturity guides be added to Table I in paragraph (a) of § 916.356: August Red—J and Red Lion—J. The peach committee unanimously recommended that the following four varieties and color chip maturity guides be added to Table I in paragraph (a) of § 917.459: Goldcrest—H, Sierra Crest—J, Sprague Last Chance—L or supervisor discretion, and Topcrest—H. The plum committee unanimously recommended that the following two varieties and descriptive maturity guides be added to Table I of paragraph (a) of § 917.460: Black Gold—Full dark red surface color with spring or with supervisor discretion; and Black Torch—Full dark red surface color with smooth shoulders or with supervisor discretion.

The color chip assignments for the Fantasia and Flavortop varieties of nectarines are changed at the recommendation of the inspection service because the J color chip is a more appropriate designation of the well-matured condition of the two varieties. The Flavortop variety would also be changed by adding "supervisory discretion" to the J color chip assignment, to allow additional flexibility and oversight in achieving the well-matured standard for that variety. Thus, the nectarine varieties and maturity assignments in Table I of § 916.356(a) will remain the same as they were at the beginning of the 1989 season, with the following exceptions:

August Red—J (new variety)
Bob Grand—change from L to L or supervisor discretion
Early May—change from G to F
Fantasia—change from L to J
Flamekist—change from L to L or supervisor discretion
Flavortop—change from J to J or supervisor discretion
Grand Stan—change from C to F
Red Lion—J (new variety)
Ruby Grand—change from J to J or supervisor discretion
Son Red—change from L to L or supervisor discretion, and
Tasty Free—change from L to J.

In addition to including the newly listed peach varieties and their maturity determinations, the maturity assignment in Table I of § 917.459(a) for the Prime Crest peach variety is changed from G to H. This action is based on inspection service observations and peach maturity subcommittee and committee recommendations indicating that H would be the most appropriate maturity designation for that variety during the 1990 season. Thus, the peach varieties and maturity assignments in Table I of § 917.459(a) will remain the same as they were at the beginning of the 1989 season with the following exceptions:

Goldcrest—H (new variety)
Prime Crest—from G to H
Sierra Crest—H (new variety)
Sprague Last Chance—L or supervisor discretion (new variety)
Topcrest—H (new variety)

The plum committee recommended that all existing 1989 maturity guides be used, without change, for the 1990 season. Thus, the plum varieties and maturity assignments in Table I of § 917.460(a) will remain the same as they were at the beginning of the 1989 season with two new additions:

Black Gold—Full dark red surface color with spring or with supervisor discretion
Black Torch—Full dark red surface color with smooth shoulders or with supervisor discretion

In his comments, Mr. Campagne implied that recent changes in maturity regulations caused the production of eight nectarine varieties to drop below 5,000 packages. He identified these varieties as Early Star, Granderli, June Grand, Star Bright in 1989, and Arm King, Gee Red, Richard's Grand and Star Grand in 1988. Seven of the eight varieties have had the same color chip designations since 1985. A color chip designation for the Star Grand variety was first listed in 1987 and has remained the same for the last three years. Thus, it would be inaccurate to conclude that the recent decrease in production levels of these varieties has resulted from the

color chip designations for these varieties. The reduced production levels Mr. Campagne refers to are more likely due to the removal of older trees as they undergo a natural decline in productivity. It is common industry practice that fruit trees are periodically replaced with newer, more marketable varieties. This practice is intended to meet the needs of the marketplace by providing a supply of fruit that appeals to the consumer. The standard for maturity has been "well-mature" since 1980. Adjustments to the color chip designations have been made over the years to more accurately reflect well-maturity, not to reduce production.

Mr. Elliott commented that color chips vary in color due to age and handling. However, the color chips are reproduced every other year and the inspection service distributes them to members in the industry and inspection service personnel who use them on the job. The comment is therefore denied.

Messrs. Campagne, Elliott and Olive commented that "well-maturity" requirements are discriminatory toward those producers and handlers who ship their tree fruits to East Coast and export markets. The claim that some varieties are forced to stay on the tree to reach "well-mature" conditions, resulting in their arrival at distant markets in over-ripe conditions. The question of shipments to distant markets has been addressed in previous rulemaking (54 FR 12412). Information obtained from terminal markets indicates that shipments received from long distances arrive in good conditions when handled properly. Modern refrigeration technology and transportation methods allow "well-matured" fruit to be shipped expediently across country to arrive in marketable conditions. Accordingly, these comments are denied.

Mr. Elliott and Mr. Campagne commented that the committees' actions in advancing the "well-maturity" requirements have discriminated against the industry members in Kern and Tulare counties. Current information indicates that the Kern and Tulare counties are not experiencing more difficulties in meeting the maturity regulation under the marketing orders than are other districts. The Department believes that the Kern and Tulare counties have performed well under the maturity requirements and have not been disadvantaged. It should be noted that these counties are represented by members on the nectarine, plum and peach committees, who have not reported that these areas have experienced unusual difficulty in meeting the maturity requirements. Also,

the plum and nectarine committee chairmen are from Tulare County. Thus, the Department is able to obtain thorough and up-to-date information regarding the progress of these counties. Therefore, the comment is denied.

Both Mr. Moody and Mr. Campagne submitted general statements challenging the use of color standards as a means of determining the maturity of tree fruit. Mr. Moody contended that: (1) There is no proof that color chips better enable the industry to satisfy consumer preferences; (2) there is no demonstrated or consistent relationship between color and internal maturity; (3) the maturity standards are too high; (4) the process for setting and changing color designations has been and continues to be abused; (5) USDA oversight of the process is inadequate; and (6) the maturity standards are a form of volume control that artificially raises the price of tree fruit. However, the Department believes that the use of color designations and guides does represent a practical, flexible, efficient and reliable method for determining the well-matured standards for nectarines, peaches and plums. Other methods, such as the "soluble solids" test can not be practically applied in the field. Further, it requires destruction of fruit. Experience and expert studies indicate that there is a consistent relationship between color and fruit maturity. Further, the variance process implemented by the industry and the Department provides for an orchard by orchard review and independent analysis of fruit maturity. The history of the maturity determination process for nectarines, plums and peaches over the last nine years has indicated that the procedures have worked well. The Department disputes the contention that the well-matured requirements have been used for volume control purposes. On the contrary, the purpose of this change is to promote marketing of the crop by assisting California nectarine producers and handlers in improving the quality of the fruit they market. Over the years, total quantities of these fruits shipped have increased rather than decreased. The actions of the committee with regard to maturity determinations are not unlike any other committee duties or actions authorized pursuant to the marketing order.

Accordingly, the maturity determination process is not flawed by the participation of committee members. Further, with regard to Department oversight of the committee and the maturity subcommittee, the maturity determination process is subject to appropriate oversight, as are other

marketing order activities. In our view, the maturity determination process has provided, over the years, fair and equitable treatment of producer and handlers. The industry members, through their consistent approval of marketing order regulations, do not agree with Mr. Moody's contention that voluntary, self-discipline of the free marketplace is preferable to the quality standards established by industry members for the benefit of the industry as a whole. Mr. Moody's and Mr. Campagne's comments therefore are denied.

The Department has determined that these actions will be beneficial in improving the quality of the fruit marketed.

Maturity Variance Procedure Change

The variance appeal process provides authority for granting a variance from the designated maturity guides during the harvest season through a maturity variance procedure. A variance may be granted on a lot by lot basis when, due to changes in conditions, the lot reaches a condition of well-maturity before it reaches the expected ground color for that variety. A producer or handler may request a variance in the designated color standard by asking for a review by an inspection service supervisor and an appropriate industry fieldman. If either or both believe a variance is warranted, a variance request is forwarded to the appropriate nectarine, peach or plum maturity subcommittee. An appeal of the subcommittee's decision, if necessary, can be made to the committee manager who will notify the appropriate Appeal Committee. Prompt decisions on variance requests are needed because of the perishability of the fruit.

The committees unanimously recommended a minor change to hasten committee decisions and thus improve the maturity variance process. A person appealing a maturity subcommittee variance decision should notify the committee manager of the appeal. In the event the committee manager is not available, a designee of the committee manager may call a meeting of the appropriate commodity's Appeal Committee to process a maturity variance appeal. Designation of another person to act in place of the committee manager during this stage of the appeal process will expedite reviews of maturity variance requests.

Mr. Campagne commented that the amendment to the maturity variance procedure is an improvement over that originally established by the committees. However, he also

commented that it fails to provide for oversight by the Department and continues to allow the committee members to grant themselves and their friends variances while refusing to grant variances to their competitors and/or competing varieties.

The Department believes that the current procedures provide a basis for objective and fair variance decisions. Representatives of the Department attend all variance subcommittee meetings to assure that equitable and adequately justified variance decisions are made. The comment is therefore denied.

This change will not result in additional costs and will be beneficial to the industries. Thus, the words "or the committee manager's designee," is added following the words "Nectarine Administrative Committee Manager" in paragraph (a)(1)(vi) of § 917.356 for nectarines; and added following the words "Peach Commodity Committee Manager" in paragraph (a)(1)(vi) of § 917.459 for peaches; and following the words "Plum Commodity Committee Manager" in paragraph (a)(1)(v) of § 917.460 for plums.

Based on the above, the Administrator of the AMS has determined that the changes above will not have a significant economic impact on a substantial number of small entities.

In view of the foregoing, the Department denies the comments received and the proposed changes suggested by commenters, except as otherwise noted in this action.

After consideration of all relevant matter presented, including the committee's recommendations, the comments received, and other information, it is found that this action, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because: (1) The requirements set forth below are substantially similar to those published as a proposed rule on March 29, 1990; (2) the shipping season has already begun and the rules issued herein should be applied to the industry for as much of the season as possible, and (3) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Parts 916 and 917

Marketing agreements, Nectarines, Peaches, Pears, Plums, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows: (These actions will be published in the Code of Federal Regulations.)

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: Sections 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

PART 916—NECTARINES GROWN IN CALIFORNIA

2. A new paragraph (a)(3)(iv) and Table I is added to § 916.350 specifying the weight-count standards for all varieties of nectarines packed in loose-filled containers to read as follows:

§ 916.350 Nectarine Regulation 8.

(a) * * *

(3) * * *

(iv) The size of nectarines, when packed in loose-filled or tight-filled containers, shall be marked in accordance with the following table which specifies the tray-pack size designation in Column A with the corresponding numerical range of nectarines in a 16-pound sample of each size of the fruit in Column B:

TABLE I.—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF NECTARINES PACKED IN LOOSE OF TIGHT-FILLED CONTAINERS

Column A—Tray pack size designation	Column B—Number of nectarines in 16-pound sample
108	88-92
96	79-87
88	76-78
84	68-75
80	62-67
72	57-61
70	52-56
64	47-51
60	44-46
56	40-43
54	37-39
50	34-36
48	29-33
42	27-28
40	26
36	25

3. Table I of paragraph (a)(1)(i) of § 916.356 is amended by adding in alphabetical order the following nectarine varieties to Column A and their corresponding maturity guides to Column B:

§ 916.356 Nectarine Regulation 14.

(a) * * *

(1) * * *

(i) * * *

Table I

* * * * *

August Red.....J
* * * * *

Red Lion.....J
* * * * *

4. Table I of paragraph (a)(1)(i) of § 916.356 is amended by removing the maturity guides from Column B and inserting the following revised maturity guides for the respective varieties in Column A:

§ 916.356 Nectarine Regulation 14.

Table I

* * * * *

Bob Grand.....L or supervisor discretion
* * * * *

Early May.....F
* * * * *

Fantasia.....J
* * * * *

Flamekist.....L or supervisor discretion
* * * * *

Flavortop.....J or supervisor discretion
* * * * *

Grand Stan.....F
* * * * *

Ruby Grand.....J or supervisor discretion
* * * * *

Son Red.....L or supervisor discretion
* * * * *

Tasty Free.....J
* * * * *

5. Paragraph (a)(1)(vi) of § 916.356 is amended by adding the words, "or the committee manager's designee," to follow the words "Nectarine Administrative Committee Manager". As revised, the first four sentences of § 916.356 (a)(1)(vi) read as follows:

§ 916.356 Nectarine Regulation 14.

(a) * * *

(1) * * *

(vi) To file an appeal, the requester shall notify the Nectarine Administrative Committee manager, or the committee manager's designee, who will immediately refer the appeal to the Appeal Committee. The Appeal Committee shall consist of the Chairman of the Peach Commodity Committee, the Chairman of the Plum Commodity Committee, and the appropriate Federal-State shipping point inspection program supervisor, or their designees. The Appeal Committee shall review all documentation and any further information provided by the requester. Decisions of the Appeal Committee must be made within one day from the time the Nectarine Administrative Committee manager, or the committee manager's designee, is notified of the appeal. * * *

6. The introductory texts of paragraphs (a)(2) and (a)(3) of § 916.356 are revised to read as follows:

§ 916.356 Nectarine Regulation 14.

(a) * * *

(2) Any package or container of Aurelio Grand, Maybelle, Mayfire, or Royal Delight variety nectarines unless:

(3) Any package or container of Early Diamond, Mayfair, or May Glo variety nectarines, unless:

7. Paragraph (a)(4) introductory text of § 916.356 is amended by removing nectarine varieties Early Star and June Grand.

8. Paragraph (a)(5) introductory text of § 916.356 is amended by adding in alphabetical order the nectarine varieties Nect-5, One One, Summer Star, Tasty Gold, and 32-79-22 and by removing the nectarine varieties Granderli, and Star Bright.

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

9. A new paragraph (a)(3)(iv) and Table I is added to § 917.442 specifying

weight-count standards for all varieties of peaches packed in loose-filled containers and reads as follows:

§ 917.442 Peach Regulation 3.

(a) * * *

(3) * * *

(iv) The size of peaches, when packed in loose-filled or tight-filled containers, shall be marked in accordance with following table which specifies in Column A the number of peaches in a 16-pound sample of each size of the fruit listed in Column B:

TABLE I.—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF PEACHES PACKED IN LOOSE OR TIGHT-FILLED CONTAINERS

Column A—Tray pack size designation	Column B—Number of peaches in 16-pound sample
96	84-96
88	78-83
84	74-79
80	65-73
72	60-84
70	55-59
64	47-54
60	46
56	44-45
54	39-43

TABLE I.—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF PEACHES PACKED IN LOOSE OR TIGHT-FILLED CONTAINERS—Continued

Column A—Tray pack size designation	Column B—Number of nectarines in 16-pound sample
50	35-38
48	31-34
42	27-30
40	26
36	25

10. Paragraph (a)(4)(ii) of § 917.454 is revised by adding a new Table I specifying equivalent plum sizes for 8-pound samples to read as follows:

§ 917.454 Plum Regulation 17.

(a) * * *

(4) * * *

(ii) The size of plums loose-filled or tight-filled in standard lug boxes, cartons, or other packages or containers be marked in accordance with the equivalent size designation for such plums when packed in four-basket crates, such as "4 X 4 size," etc. Such containers shall be marked in accordance with the following table:

TABLE I.—EQUIVALENT PLUM SIZES: MAXIMUM NUMBER OF PLUMS IN 8-POUND SAMPLE

	2x2	2x2x3	2x3	2x3x3	3x3	2x3x4	3x4	3x4x4	4x4	3x4x5	4x5	4x5x5	5x5	5x6	6x6
Aleta Rose	16	18	21	25	28	32	36	42	50	58	67				
Ambra	11	15	19	23	27	31	35	43	51	59	67				
Angeles	11	15	19	23	27	31	35	43	51	59	67				
Angelino	20	22	25	28	31	35	39	43	54	63	67				
Autumn Giant	16	18	21	25	28	32	36	42	50						
Autumn Rosa	15	17	20	23	27	31	35	40	50	61	72				
Black Beaut	19	21	24	27	30	34	38	45	52	62	69				
Black Diamond	21	24	28	31	34	38	42	50	56						
Black Flame	20	22	25	28	31	35	39	43	54	63					
Black Gold	20	22	25	28	31	35	39	43	54	63					
Black Knight	16	18	21	25	28	32	36	42	50	58					
Black Premium	20	23	26	29	32	36	40	46	54						
Black Torch	20	22	25	28	31	35	39	43	54						
Blackamber	21	24	28	31	34	38	42	50	56						
Carolyn Harris	20	22	25	28	31	35	39	46	54	61					
Casselman	14	16	19	22	26	30	34	38	48	56	63				
Catalina	21	24	28	31	34	38	42	50	56						
Durado	21	24	28	31	34	38	42	50	58	66	74				
Early Hawaiian Ann	17	19	22	26	29	33	37	44	52	60					
Ebony	21	24	28	31	34	38	42	50	56	66					
El Dorado		24					44	50	62	68					
Empress							30	35	43	50	57				
Freedom	21	24	28	31	34	38	42	50	56						
French Prune	15	17	20	24	28	32	36	43	52	61	71	75	83	115	139
Filar	21	24	28	31	34	38	42	50	56						
Frontier	17	19	22	26	29	33	37	43	52	61					
Gar-Rosa	19	21	24	27	30	34	38	45	53	64	71				
Grand Rosa	17	19	22	26	29	33	37	44	52	60					
Imp. L. Santa Rosa	17	19	22	26	29	33	37	44	52	60	64				
July Red	17	19	22	26	29	33	37	44	52	60	64				
July Santa Rosa	17	19	22	26	29	33	37	44	52	60	69				
Kelsey	14	16	19	22	26	30	34	39	47						
King David	16	18	21	25	28	32	36	42	50						
King Richard	20	22	25	28	31	35	39	43	54						
King's Black	16	18	21	25	28	32	36	42	50	58					
Kings Diamond	16	18	21	25	28	32	36	42	50	58					
Loroda	16	18	21	25	28	32	36	42	50	58					
Late Santa Rosa	17	19	22	26	29	33	37	44	52	60	64				

TABLE I.—EQUIVALENT PLUM SIZES: MAXIMUM NUMBER OF PLUMS IN 8-POUND SAMPLE—Continued

	2x2	2x2x3	2x3	2x3x3	3x3	2x3x4	3x4	3x4x4	4x4	3x4x5	4x5	4x5x5	5x5	5x6	6x6
Linda Rosa	14	16	19	22	26	30	35	41	48	59	63				
Mariposa	20	22	25	28	31	35	39	46	54	61					
May Rosa	19	21	24	27	30	34	38	45	53	64	71				
Midsummer	20	22	25	28	31	35	39	43	54	63					
Moyer	15	17	20	24	28	32	36	43	52	61	71	75	83	115	139
Nubiana	21	24	28	31	34	38	42	50	56						
President							33	39	45	52	57				
Prima Black	19	21	24	27	30	34	38	45	52	62	69				
Queen Ann	16	18	21	25	28	32	36	42	50						
Queen Rosa	20	23	26	29	32	36	40	46	53						
Red Beaut	19	21	24	27	30	34	38	45	52	62	74				
Red Rosa	17	19	22	26	29	33	37	44	52	60	64				
Redroy	14	16	19	22	26	30	34	39	47	58					
Rich Red	21	24	28	31	34	38	42	50	58	66	74				
Rosemary	14	16	19	22	26	30	34	39	50						
Royal Diamond	21	24	28	31	34	38	42	50	56						
Royal Garnet	17	19	22	26	29	33	37	44	52	62	69				
Royal Red	19	21	24	27	30	34	38	45	52	62	74				
Roysum	15	17	20	23	27	31	35	40	50	61	74				
Santa Rosa	17	19	22	26	29	33	37	44	52	62	69				
Sharon's Plum	17	19	22	26	29	33	37	43	52	63					
Simka	16	18	21	25	28	32	36	42	50						
Spring Beaut	19	21	24	27	30	34	38	45	52	62	74				
Standard										52	62		83		
Wickson	16	18	21	25	28	32	36	42	51						
5-100	21	24	28	31	34	38	42	50	56						
All Other Varieties															
> .99 ratio	14	16	19	22	26	30	34	39	47	55	65	75	83	115	139
.90 to .99 ratio	18	20	23	27	30	34	38	43	51	60	67	75	83	115	139
< .90 ratio	20	23	27	30	33	37	42	50	56	64	71	75	83	115	139

11. Paragraph (a)(5) of § 917.454 is amended by changing the year designation 1989/90 to 1990/91. As revised, § 917.454(a)(5) reads as follows:

§ 917.454 Plum Regulation 17.

(a) * * *

(5) Each package or container of loose-filled or tight-filled plums other than bulk bin containers, master containers of consumer packages, and individual consumer packages in master containers shall bear on one outside end, in plain sight and in plain letters, the words "28 pounds net weight" or, for the 1990/91 marketing season, "24 pounds net weight.", whichever is appropriate.

12. Paragraph (a)(1)(vi) of § 917.459 is amended by adding the words ", or the committee manager's designee," to follow the words "Peach Commodity Committee Manager." as revised, the first four sentences of § 917.459(a)(1)(vi) read as follows:

§ 917.459 Peach Regulation 14.

(a) * * *

(1) * * *

(vi) To file an appeal, the requester shall notify the Peach Commodity Committee manager, or the committee manager's designee, who will immediately refer the appeal to the Appeal Committee. The Appeal Committee shall consist of the Chairman

of the Plum Commodity Committee, the Chairman of the Nectarine Administrative Committee, and the appropriate Federal-State shipping point inspection program supervisor, or their designees. The Appeal Committee shall review all documentation and any further information provided by the requestor. Decisions of the Appeal Committee must be made within one day from the time the Peach Commodity Committee manager, or the committee manager's designee, is notified of the appeal. * * *

13. Paragraph (a)(4) introductory text of § 917.459 is amended by adding in alphabetical order the peach varieties David Sun, Early May Crest, Kingscrest, June Sun, Sierra Crest, Snow Flame and Summer Crest, and by removing the peach varieties Redhaven and Willie Red.

14. Paragraph (a)(5) introductory text of § 917.459 is amended by adding in alphabetical order the peach varieties Jefferson Sun, John Henry and Zee Lady, and by removing the peach varieties Fortyniner, Franciscan, Sun Lady and Toreador.

15. Table I of Paragraph (a) of § 917.459 is amended by adding in alphabetical order the following varieties of Peaches to Column A and corresponding maturity guides to Column B:

§ 917.459 Peach Regulation 14.

* * *

Table I

Goldcrest.....	H
Sierra Crest.....	H
Sprague Last Chance...L or supervisor discretion	
Topcrest.....	H

16. Table I of paragraph (a) of § 917.459 is amended by removing the maturity guide from Column B of the following peach variety under Column A and adding the revised maturity guide for that variety in column B:

Prime Crest..... H

17. Paragraph (a)(1)(v) of § 917.460 is amended by adding the words ", or the committee manager's designee," to follow the words "Plum Commodity Committee Manager." As revised, the first four sentences of § 917.460(a)(1)(v) read as follows:

§ 917.460 Plum Regulation 19.

(a) * * *

(1) * * *

(v) To file an appeal, the requester shall notify the Plum Commodity Committee manager, or the committee manager's designee, who will

immediately refer the appeal to the Appeal Committee. The Appeal Committee shall consist of the Chairman of the Peach Commodity Committee, the Chairman of the Nectarine Administrative Committee, and the appropriate Federal-State shipping point inspection program supervisor, or their designees. The Appeal Committee shall review all documentation and any further information provided by the requester. Decisions of the Appeal Committee must be made within one day from the time the Plum Commodity Committee manager, or the committee manager's designee, is notified of the appeal. * * *

18. Table I of paragraph (a) of § 917.460 is amended by adding in alphabetical order the following varieties of plums to Column A and corresponding maturity guides to Column B:

Black Gold—Full dark red surface color with spring or with supervisory discretion, and
Black Torch—Full dark red surface color with smooth shoulders or with supervisory discretion.

19. Table II of paragraph (b) of § 917.460 is amended by adding in alphabetical order the following varieties of plums to Column A and their corresponding number of plums-per-sample to Column B:

Aleta Rose.....	67
Black Flame.....	63
Black Premium.....	54
5-100.....	56

20. Table II of paragraph (b) of § 917.460 is amended by removing the following plum varieties from Column A and their corresponding plums-per-sample number from column B:

Andys Pride.....	69
King James.....	50
Rosa Ann.....	69

Dated: June 12, 1990.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable
Division.

[FR Doc. 90-13946 Filed 6-14-90; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-43-AD; 39-6636]

Airworthiness Directives; Fokker Model F27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F27 series airplanes, which requires modification of the cockpit voice recorder (CVR) and flight data recorder (FDR). This amendment is prompted by reports that the voice and flight data recorders, in their present configuration, may continue to operate and possibly lose information following an accident. This condition, if not corrected, could affect air safety if important information provided by the CVR and FDR is not available following an accident to facilitate the determination of probable cause and the subsequent development of necessary corrective action or design changes to prevent future accidents.

EFFECTIVE DATE: July 23, 1990.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Huhn, Standardization Branch, ANM-113; telephone (206) 431-1950. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68968, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Fokker Model F-27 series airplanes, which requires modification of the cockpit voice recorder (CVR) and flight data recorder (FDR), was published in the Federal Register on April 6, 1990 (55 FR 12862).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 33 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. The estimated cost for required parts is \$700 per airplane. Based on these figures, the

total cost impact of the AD on U.S. operators is estimated to be \$36,300.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Applies to Model F27 series airplanes, Serial Numbers 10102 through 10684, 10686, 10687, and 10689 through 10692, certificated in any category. Compliance is required within 180 days after the effective date of this AD, unless previously accomplished.

To prevent loss of cockpit voice recorder and flight data recorder information, accomplish the following:

A. Modify the voice recorder by installing wiring, an impact switch, a power relay, and a circuit breaker, in accordance with Fokker Service Bulletin F27/23-27, dated August 14, 1989.

B. Modify the flight data recorder by installing wiring, an impact switch, a power relay, and a circuit breaker, in accordance

with Fokker Service Bulletin F27/31-11, dated August 14, 1989.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region, and a copy sent to the cognizant FAA Principal Maintenance Inspector (PMI). The PMI will then forward comments or concurrence to the Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 23, 1990.

Issued in Seattle, Washington, on June 6, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-13940 Filed 6-14-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-ASW-4; Amendment 39-6637]

Airworthiness Directives; Sikorsky Model S-76B Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends an airworthiness directive (AD) that presently requires an initial and repetitive visual inspection to detect cracking of the forward engine support cross beam on Sikorsky Model S-76B helicopters. This amendment now requires inspections only for those helicopters that have been operating with overweight horizontal stabilizers or with certain lights on the horizontal stabilizer tips, and have not had the cross beam replaced since operating under either of those conditions. These

particular helicopters are likely to experience cracks in the engine support beams which, if not corrected, may result in loss of proper engine support.

EFFECTIVE DATE: July 16, 1990.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service bulletin may be obtained from Sikorsky Aircraft, 600 Main Street, Stratford, Connecticut 06601-1381, or may be examined in the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Bldg. 3B, Room 158, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Richard B. Noll, Boston Aircraft Certification Office, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7111.

SUPPLEMENTARY INFORMATION: Amendment 39-5856 (53 FR 5366, February 24, 1988), AD 88-05-01, currently requires initial and repetitive visual inspections to detect cracking of the forward engine support cross beam on Sikorsky Model S-76B helicopters.

After issuing Amendment 39-5856, the FAA determined that the cracking in the cross beam was caused by a dynamic response condition in which excessive stresses in the cross beam were induced by vibratory loads from an overweight horizontal stabilizer installation on certain S-76B helicopters. Consequently, the FAA determined that the applicability statement of the AD should be amended to limit the scope of the AD to 10 specific S-76B helicopters that were subjected to the vibratory stresses caused by either an overweight horizontal stabilizer or a stabilizer with certain tip lights installed and that have the original cross beam cap angle and web installed.

A proposal to amend the AD was published in the Federal Register on January 11, 1990 (55 FR 1046). Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received. Accordingly, the proposal is adopted without change.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is relieving in nature and

imposes no additional burden on any person. Therefore, I certify that this action: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal; and (4) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) [Revised Pub. L. 97-449, January 12, 1983]; and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39-5856 (53 FR 5366, February 24, 1988), AD 88-05-01, by revising the applicability statement as follows:

Sikorsky Aircraft: Applies to Sikorsky Aircraft Model S-76B helicopters, Serial Numbers (S/N) 760312, 760314, 760316, 760317, 760318, 760319, 760327, 760330, 760331, and 760337, certificated in any category, equipped with the original cross beam cap angle, Part Number (P/N) 76070-20526-102, and the original cross beam web, P/N 76070-20526-139, -149, or -158. (Docket No. 88-ASW-4)

For helicopters with 300 or more hours' time in service, compliance is required within the next 50 hours' time in service after the effective date of this amended AD, and thereafter at intervals not to exceed 50 hours' time in service from the last inspection.

This amendment becomes effective July 16, 1990.

This amendment amends Amendment 39-5856 (53 FR 5366, February 24, 1988), AD 88-05-01.

Issued in Fort Worth, Texas, on June 6, 1990.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 90-13939 Filed 6-14-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Tylosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions reflecting approval of a new animal drug application (NADA) held by United Suppliers, Inc. The NADA provides for the use of certain tylosin Type A medicated articles to make Type C swine feed. In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of the NADA.

EFFECTIVE DATE: June 25, 1990.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of NADA 102-590, held by United Suppliers, Inc. The NADA provides for the use of certain tylosin Type A medicated articles for making Type C medicated swine feed. The withdrawal of approval leaves United Suppliers, Inc., with no approved NADA's. Therefore, the agency is amending 21 CFR 510.600 (c)(1) and (c)(2) and 558.625(b)(46) to reflect the withdrawal of approval of the NADA.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry "United Suppliers, Inc.," and in the table in paragraph (c)(2) by removing the entry "017475".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.625 [Amended]

4. Section 558.625 *Tylosin* is amended by removing and reserving paragraph (b)(46).

Dated: June 11, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-13902 Filed 6-14-90; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Enrofloxacin Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Mobay Corp., Animal Health Division. The supplemental NADA provides for deletion of the contraindication against use of Baytril® (enrofloxacin) Tablets for the treatment of susceptible bacterial pathogens in breeding female dogs.

EFFECTIVE DATE: June 15, 1990.

FOR FURTHER INFORMATION CONTACT:

Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Mobay Corp., Animal Health Division, P.O. Box 390, Shawnee Mission, KS 66201, filed a supplement to NADA 140-441 providing for deletion of the contraindication against use of Baytril® (enrofloxacin) Tablets to treat breeding female dogs for bacterial dermal, respiratory, and urinary tract infections in addition to its

approved use in other dogs for those uses. The supplement is approved as of June 6, 1990, and the regulations are amended in § 520.812(c)(3) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Under the Generic Animal Drug and Patent Term Restoration Act of 1988, and section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval qualifies for 3 years of marketing exclusivity beginning June 6, 1990, because a new clinical investigation was required for its approval.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.812 [Amended]

2. Section 520.812 *Enrofloxacin tablets* is amended in paragraph (c)(3) by removing the sentence "Safe use in breeding female dogs has not been established."

Dated: June 6, 1990.
 Robert C. Livingston,
 Acting Director, Office of New Animal Drug
 Evaluation, Center for Veterinary Medicine.
 [FR Doc. 90-13903 Filed 6-14-90; 8:45 am]
 BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 18

Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges; Correction

AGENCY: Office of the Secretary, Labor.

ACTION: Final rule; correction.

SUMMARY: The Department of Labor is correcting an omission in the appendix to the final rule which appeared in the *Federal Register* on April 9, 1990, 55 FR 13218.

EFFECTIVE DATE: May 9, 1990.

FOR FURTHER INFORMATION CONTACT: Deputy Chief Judge John M. Vittone, U.S. Department of Labor, 1111 20th Street NW., suite 700, Washington, DC 20036, telephone: (202) 653-5052.

SUPPLEMENTARY INFORMATION: Due to administrative inadvertence, Reporter's Note 18.802 did not properly describe the admissibility of administrative files under the Rules of Evidence. Consequently, the second and third sentences of Reporter's Note 18.802 should be removed from the April 9, 1990 version and the below sentences should be inserted in their place.

Correction

In rule document 90-7740 beginning on page 13218 in the issue of Monday, April 9, 1990, make the following correction: *Reporter's Note to § 18.802 (Corrected)*

On page 13233, in the first column, in the Reporter's Note to § 18.802, remove the two sentences from the text, beginning with "Accordingly" through § 18.902(10)" and add the following:

If a program provides for the creation of an "administrative file" and for the submission of an "administrative file" to the judge presiding at a formal adversarial adjudication governed by these rules, see section 18.1101, the "administrative file" would fall outside the bar of the hearsay rule. Similarly, such "administrative file" is self-authenticating, section 18.902(10).

Signed at Washington, DC., this 11th day of June 1990.

Elizabeth Dole,
 Secretary of Labor.

[FR Doc. 90-13936 Filed 6-14-90; 8:45 am]

BILLING CODE 4510-23-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amdt. Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning July 1, 1990. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after July 1, 1990 and will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATES: July 1, 1990.

FOR FURTHER INFORMATION CONTACT: J. Ronald Goldstein, Senior Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2022 K Street, NW., Washington, DC 20006, 202-778-8850 (202-778-8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in Part 2619. Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required. (Such plans may value benefit liabilities that are payable as annuities on the basis of a qualifying bid obtained from an insurer.)

Appendix B in part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since June 1, 1990. This amendment adds to appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after July 1, 1990, which set reflects an decrease of ¼ percent in the immediate interest rate from 7¼ to 7½ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the *Federal Register* by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after July 1, 1990, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in executive Order 12291, because it will not result in an annual effect on the economy of \$100 million or more, a major increase in costs for consumers on individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, part 2619 chapter XXVI, Title 29, Code of Federal Regulations is hereby amended as follows:

1. The authority citation for part 2619 is revised to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362 (1988).

2. Rate Set 84 of appendix B is revised and Rate Set 85 of appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "Gy" for deferred annuities and

to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1 , k_2 , k_3 , n_1 , n_2 and n_3 are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate (%)	Deferred annuities					
	On or after	And before		k_1	k_2	k_3	n_1	n_2	n_3
84	6-1-90	7-1-90	7.75	1.0700	1.0575	1.0400	7		8
85	7-1-90		7.50	1.0675	1.0550	1.0400	7		8

James B. Lockhart III,
Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 90-13907 Filed 6-14-90; 8:45 am]
BILLING CODE 7708-01-M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not

the rates are changing. This amendment adds to the table the rate series for the month of July 1990.

EFFECTIVE DATE: July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (See 5 U.S.C. 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order

12291 because it will not have an annual effect on the economy of \$100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

(c) Interest Rates.

For valuation dates occurring in the month:	The values for are:															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_{16}
July 1990..	.08875	.08625	.08375	.08	.07625	.07125	.07125	.07125	.07125	.07125	.065	.065	.065	.065	.065	.05875

Issued at Washington, DC, on this 8th day of June 1990.

James B. Lockhart III

Executive Director, Pension Benefit Guaranty Corporation

[FR Doc. 90-13908 Filed 6-14-90; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD2-90-02]

Special Local Regulations; Annual Marine Events Within the Second Coast Guard District

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule amends the list of annual marine events within the Second Coast Guard District and clarifies the permanent special local regulations applicable to such events thereby ensuring the safety of life and property on and adjacent to navigable waters while avoiding the necessity of publishing separate, temporary regulations each year for each event.

EFFECTIVE DATE: This rule becomes effective on July 16, 1990.

FOR FURTHER INFORMATION CONTACT: LTJG G.W. Wentz, Chief, Boating Affairs Branch, Second Coast Guard District. The telephone number is (314) 425-5971.

SUPPLEMENTARY INFORMATION: On April 19, 1990, the Coast Guard published a Notice of Proposed Rulemaking in the Federal Register at 55 FR 14839. Interested persons were invited to participate in this rulemaking by submitting written views, data, or arguments no later than May 21, 1990. No comments were received.

Drafting Information

The drafters of this regulation are LTJG G.W. Wentz, Chief, Boating Affairs Branch, Second Coast Guard District and LT M.A. Suire, USCG, Project Attorney, Second Coast Guard District Legal Office.

Discussion

Each year various public and private organizations sponsor marine events on navigable waters within the Second Coast Guard District, which include slow-moving boat parades, raft races, high-speed hydroplane races, steamboat races, and fireworks displays. The events are held annually in approximately the same location and during the same general period of time

each year. Table 1 to part 100 of title 33 of the Code of Federal Regulations is a listing of these annual events.

This rule amends Table 1 to add those events which have become annual and delete those which have been discontinued since § 100.201 was originally published, and to make minor changes to the names, sponsors, location and scheduling of other events listed in Table 1. In addition, the special local regulations under subsection (b) have been clarified to more accurately reflect the scope of the Coast Guard Patrol Commander's authority.

The nature of the events is such that special local regulations are deemed necessary to ensure the safety of life and property on and adjacent to navigable waters. The amended regulation will preclude the necessity of issuing special local regulations separately for each event every year. Once this proposed rule becomes effective, public notice of the particulars of the annual events will be provided in local notices to mariners and specially-issued regatta notices.

Economic Assessment and Certification

This rule has been reviewed under the provisions of Executive Order 12291 and determined not to be a major rule. In addition, this rule is considered to be nonsignificant under the guidelines of DOT Order 2100.5 of 5/22/80, Policies and Procedures for Simplification, Analysis, and Review of Regulations. An economic evaluation has not been conducted as the impact of the rule is expected to be minimal. The above conclusions follow from the temporary duration of the regulated areas for each annual event. If issued separately, the impact of each temporary regatta regulation would be deemed minimal. There is no reason to believe that compiling the annual events and the attendant regulations into a consolidated list would increase the otherwise minimal economic impact. Pursuant to 5 U.S.C. 601, et seq., the Regulatory Flexibility Act, it is certified that the rule will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment and Certification

This action has been thoroughly reviewed by the Coast Guard and has been determined to be categorically excluded from further environmental documentation in accordance with 2.B.2.c. of the NEPA Implementing Procedures, COMDTINST M16475.1B. A copy of the Categorical Exclusion Certification is available for review on the docket.

Federalism Assessment and Certification

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. As noted above, this rule merely compiles a list of anticipated annual events and outlines the regulations which would be in effect if each regulation was accomplished separately.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Final Regulation

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46(b) and 33 CFR 100.35.

2. Part 100 is amended by revising § 100.201 to read as follows:

§ 100.201 Annual marine events within the Second Coast Guard District.

(a) Permanent special local regulations are hereby established for the marine events listed in Table 1. These regulations will be effective annually, for the duration of each event, on or about the dates indicated in Table 1. Annual notice of the exact dates and times of the effective period of the regulations with respect to each event, the geographical description of each regulated area, and details concerning the nature of the event and the number of participants and types of vessels involved will be published in local notices to mariners and specially-issued regatta notices. To be placed on the mailing list for such notices, contact: Commander (oan), Second Coast Guard District, 1430 Olive Street, St. Louis, Missouri, 63103-2398.

(b) *Special Local Regulations.* (1) The U.S. Coast Guard and U.S. Coast Guard Auxiliary will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHz) by the call sign "COAST GUARD PATROL COMMANDER." Vessels desiring to transit the regulated area may do so only with the prior approval of the Patrol Commander and when so directed by that officer. Vessels granted

permission to transit the regulated area are to do so at 'no wake' speed. The above restrictions shall not apply to event participants or patrol vessels performing assigned duties.

(2) The Patrol Commander may direct the anchoring, mooring or movement of any vessel within the regulated area. A succession of sharp, short blasts by whistle or horn from a designated patrol vessel shall be the signal to stop. Failure or refusal to stop or comply with orders of the Patrol Commander may result in expulsion from the area, citation for failure or refusal to comply, or both.

(3) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(4) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(6) The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the marine event if earlier than the announced termination time.

(c) *Effective Dates:* The effective dates and times for each regulation will be published and broadcast in local notices to mariners. All times listed will represent local time. The times will represent guidelines for possible intermittent river closures not to exceed Three (3) hours in duration. Mariners will be afforded enough time between closure periods to transit the area in a timely manner.

Table One

Kentucky Derby Festival Steamboat Race

Sponsor: Kentucky Derby Festival Inc.

Date: Early May

Location: Ohio River, mile 604.0, near Louisville, KY

Memphis in May Canoe & Kayak Race

Sponsor: Outdoors, Inc.

Date: Early May

Location: Lower Mississippi River, mile 738.5, near Memphis, TN

Cape Girardeau Riverfest

Sponsor: Cape Girardeau Riverfest Association

Date: Early June

Location: Upper Mississippi River, mile 52.0, near Cape Girardeau

Steamboat Days

Sponsor: Peoria Convention & Visitors Bureau

Date: Middle June

Location: Illinois River, mile 102.3, near Peoria, IL

Budweiser Indiana Governor's Cup

Sponsor: Madison Regatta, Inc.

Date: Late June

Location: Ohio River, mile 558.0, near Madison, IN

Riverfest

Sponsor: Riverfest, Inc.

Date: Late June

Location: Upper Mississippi River, mile 689.0, near LaCrosse, WI

Riverbend Festival Formula I Outboard Race

Sponsor: Friends of the Festival, Inc.

Date: Late June

Location: Tennessee River, mile 463.5, near Chattanooga, TN

Great Tennessee River Raft Race

Sponsor: Tennessee Jaycee Foundation

Date: Early July

Location: Tennessee River, mile 470.5, near Chattanooga, TN

Clinton Riverboat Days

Sponsor: Riverboat Days Inc.

Date: Early July

Location: Upper Mississippi River, mile 520.0, near Clinton, IA

V.P. Fair

Sponsor: V.P. Fair Foundation

Date: Early July

Location: Upper Mississippi River, mile 179.2, near St. Louis, MO

Freedom Festival's Thunder on the Ohio

Sponsor: Evansville Freedom Festival

Date: Early July

Location: Ohio River, mile 793.0, near Evansville, OH

Steubenville Regatta

Sponsor: Steubenville Regatta and Racing Association

Date: Middle July

Location: Ohio River, mile 67.0, near Steubenville, OH

Ramblin Raft Race

Sponsor: American Rafting Association

Date: Middle July

Location: Upper Mississippi River, mile 856.0, near Minneapolis, MN

River-Cade Festival & Fireworks

Sponsor: Port of Sioux City River-Cade Association, Inc.

Date: Late July

Location: Missouri River, mile 731.0, near Sioux City, IA

Hastings Flotilla Frolic

Sponsor: Hastings Flotilla Frolic Association

Date: Late July

Location: Upper Mississippi River, mile 814.0, near Hastings, MN

Oakmont Yacht Club Regatta

Sponsor: Oakmont Yacht Club

Date: Late July

Location: Allegheny River, mile 12.0, near Oakmont, PA

Minneapolis Aquatennial Formula I Grand Prix

Sponsor: Minneapolis Aquatennial Association

Date: Late July

Location: Upper Mississippi River, mile 854.8, near Minneapolis, MN

Riverfront Regatta

Sponsor: The Downtown Council

Date: Late July

Location: Ohio River, mile 470.8, near Cincinnati, OH

Huntington-Miller Classic

Sponsor: Tri-State Fair and Regatta

Date: Late July

Location: Ohio River, mile 307.5, near Huntington, WV

Keokuk Powerboat Nationals

Sponsor: Midwest Power Boat Association

Date: Late July

Location: Upper Mississippi River, mile 362.5, near Keokuk, IA

Pittsburgh Three Rivers Regatta

Sponsor: Pittsburgh Three Rivers Regatta

Date: Early August

Location: Ohio, Allegheny & Monongahela Rivers, mile 00.0, near Pittsburgh, PA

Ohio River Festival Regatta

Sponsor: Ohio River Festival Inc.

Date: Early August

Location: Ohio River, mile 220.0, near Ravenswood, WV

Beaver County River Regatta

Sponsor: Beaver County River Regatta, Inc.

Date: Middle August

Location: Beaver River, mile 00.0, near Bridgewater, PA

Lansing Venetian Night

Sponsor: Lansing Lions Club, Inc.

Date: Middle August

Location: Upper Mississippi River, mile 664.0, near Lansing, IA

USDBA/Florence, AL World Finals

Sponsor: City of Florence

Date: Middle August

Location: Tennessee River, mile 257.0, near Florence, AL

Ohio River Championship River Days

Sponsor: River Days Committee

Date: Late August

Location: Ohio River, mile 355.5, near Portsmouth, OH

Annual Charleston Sternwheel Regatta

Sponsor: Charleston Festival Commission, Inc.

Date: Late August

Location: Great Kanawha River, mile 58.0, near Charleston, WV

Boatarama

Sponsor: Marine Retailers of Louisville

Date: Late August

Location: Ohio River, mile 604.3, near Louisville, KY

Armstrong County Chamber of Commerce Regatta

Sponsor: Armstrong County Chamber of Commerce

Date: Late August

Location: Allegheny River, mile 45.0, near Kittanning, PA

New Richmond Riverfest

Sponsor: New Richmond Riverfest, Inc.

Date: Late August

Location: Ohio River, mile 450.6, near New Richmond, OH

The Great Missouri River Raft Regatta

Sponsor: The Great Missouri River Raft Regatta

Date: Early September

Location: Missouri River, mile 627.5, near Omaha, NE

Ohio Sternwheel Festival

Sponsor: Ohio River Sternwheel Festival

Date: Early September

Location: Ohio River, mile 171.9, near Marietta, OH

American Performance Racing Regatta
Sponsor: Heritage Corporation of Louisville & Jefferson County
Date: Early September
Location: Ohio River, mile 604.0, near Louisville, KY

Steamboat Days Airshow
Sponsor: Steamboat Days Festival, Inc.
Date: Early September
Location: Ohio River, mile 603.0, near Louisville, KY

Fort Smith United Way Raft Race
Sponsor: United Way of Fort Smith, Inc.
Date: Early September
Location: Arkansas River, mile 308.5, near Fort Smith, AR

Heartland Thunderfest
Sponsor: Mississippi River Heartland Music Productions Ltd.
Date: Early September
Location: Upper Mississippi River, mile 456.2, near Davenport, IA

Toyota/WEBN Fireworks
Sponsor: WEBN Radio
Date: Early September
Location: Ohio River, mile 470.0, near Cincinnati, OH

Annual Fernbank Regatta
Sponsor: Ohio Valley Motorboat Racing Association
Date: Early September
Location: Ohio River, mile 483.0, near Cincinnati, OH

Hoosier Boy Regatta
Sponsor: Indiana Outboard Association
Date: Middle September
Location: Ohio River, mile 505.5, near Rising Sun, IN

River Heritage Days
Sponsor: American Performance Racing
Date: Middle September
Location: Ohio River, mile 129.5, near New Martinsville, WV
Dated: June 7, 1990.

W. J. Ecker,
Rear Admiral (Lower Half), U.S. Coast Guard, Commander, Second Coast Guard District.
[FR Doc. 90-13887 Filed 6-14-90; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 117

CGD7-90-07

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, South Carolina

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the South Carolina Department of Highways and Public Transportation, the Coast Guard is changing the regulations governing the Limehouse Bridge, mile 479.3 at Johns Island, by permitting the number of openings to be limited during certain periods. This proposal is being made because vehicular traffic has increased. This action should accommodate the

needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on July 16, 1990.

FOR FURTHER INFORMATION CONTACT: Gary D. Pruitt (305) 536-4103.

SUPPLEMENTARY INFORMATION: On March 14, 1990, the Coast Guard published a proposed rule (55 FR 9466) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as Public Notice 4-90 dated March 30, 1990. Interested persons were given until April 30, 1990, to submit comments.

Drafting Information

The drafters of these regulations are Mr. Gary D. Pruitt, project officer, and LCDR D. G. Dickman, project attorney.

Discussion of Comments

No comments were received on the proposed change. The final rule is unchanged from the proposed rule published on March 14, 1990.

Federalism

This action has been analyzed in accordance with the principals and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that, if adopted, they will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117 DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 USC 499; 49 CFR 1.48; 33 CFR 1.05-1(g).

2. Section 117.911(e) is revised to read as follows:

§ 117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.

(e) John Limehouse bridge across the Stono River, mile 479.3 at Johns Island. The draw shall open on signal; except that between 6:30 a.m. and 9 a.m., and 4 p.m. and 6:30 p.m., Monday through Friday except federal holidays the draw need open only on the hour and 30 minutes after the hour. Between 9 a.m. and 4 p.m., Monday through Friday except federal holidays, from March 15 to June 15, and from September 15 to November 15, the bridge need not be opened except on the hour, 20 minutes after the hour, and 40 minutes after the hour.

Dated: June 1, 1990.

R.E. Kramek,
Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 90-13949 Filed 6-14-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[Reg. 90-04]

Safety Zone Regulations: Louisville, KY

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Ohio River, mile 603.2 to 604.3. The zone is needed to protect all vessels and spectators from a safety hazard associated with a fireworks display sponsored by the Mayor's Gala, Lighting of the Bridge. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on 23 June 1990. It terminates on 23 June 1990 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LTJG M.R. Stalker (502) 582-5194.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication due to the short notice of the incident. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is

needed to respond to potential hazards to the vessels involved.

Drafting Information

The drafter of this regulation is LTJG M.R. Stalker, project officer for the Captain of the Port.

Discussion of Regulation

The event requiring this regulation will begin on 23 June 1990 at 2130 EDST and end on 23 June 1990 at 2300 EDST. The fireworks display will take place at mile 603.5 on the Ohio River. The river closure is needed to protect river traffic and spectators.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security, Measures, Vessels, Waterways.

Regulation

PART 165—[AMENDED]

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new 165.T0230 is added to read as follows:

§ 165.T0230 Safety Zone: All waters of the Ohio River from Mile 603.2 to 604.3.

(a) *Location.* The following area is a safety zone: All waters of the Ohio River Mile 603.2 to 604.3.

(b) *Effective Date.* This regulation becomes effective at 2130 EDST on 23 June 1990. It terminates at 2300 EDST on 23 June 1990, unless sooner terminated by the Captain of the Port.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(2) The Captain of the Port's representative may be contacted on VHF radio Channel 16 during the event.

Dated: May 18, 1990.

D.W. Cleveland,

Captain of the Port, Louisville, Kentucky.

[FR Doc. 90-13888 Filed 6-14-90; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3786-1]

Minnesota: Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Minnesota has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act of 1976 as amended (hereinafter "RCRA" or the "Act"). The Environmental Protection Agency (EPA) has reviewed Minnesota's application and has reached a decision, subject to public review and comment, that Minnesota's hazardous waste program revisions satisfy all the requirements necessary to qualify for final authorization. Thus, EPA intends to grant final authorization to Minnesota to operate its expanded program, subject to authority retained by EPA under the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA").

EFFECTIVE DATE: Final authorization for Minnesota's program revisions shall be effective August 14, 1990, unless EPA publishes a prior Federal Register (FR) action withdrawing this immediate final rule. All comments on Minnesota's program revision application must be received by 4:30 p.m. central time on July 16, 1990.

ADDRESSES: Copies of Minnesota's program revision application are available for inspection and copying from 9 a.m. to 4 p.m. at the following addresses: Ms. Carol Nankivel, Minnesota Pollution Control Agency, 520 Lafayette Road, St. Paul, Minnesota 55155, Phone (612) 643-3498; U.S. EPA Headquarters Library, PM 211A, 401 M Street, SW., Washington, DC 20460, Phone (202) 382-5926; Ms. Christine Klemme, U.S. EPA, Region V, Office of RCRA, 230 S. Dearborn, 5HR-13, Chicago, Illinois 60604, Phone (312) 886-3715. Written comments should be sent to Ms. Christine Klemme, Minnesota Regulatory Specialist, U.S. EPA, Region V, 230 S. Dearborn, 5HR-13, Chicago, Illinois 60604, Phone (312) 886-3715.

FOR FURTHER INFORMATION CONTACT: Christine Klemme, Minnesota Regulatory Specialist, U.S. EPA, Region V, Office of RCRA, 230 South Dearborn,

5HR-13, Chicago, Illinois 60604, (312) 886-3715, FTS 8 886-3715).

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

In accordance with 40 CFR 271.21(a), revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessary because of changes to EPA's regulations in 40 CFR parts 124, 260-268 and 270.

B. Minnesota

Minnesota initially received final authorization for its base RCRA program effective on February 11, 1985 (50 FR 3756, January 28, 1985). On September 18, 1987, and June 23, 1989, additional approved program revisions became effective (see 52 FR 27199, July 20, 1987, and 54 FR 16361, April 24, 1989, respectively). Minnesota has since submitted an additional program revision application which EPA has reviewed. EPA has made an immediate final decision, subject to public review and comment, that Minnesota's hazardous waste program revisions satisfy all the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization to Minnesota for these additional program revisions.

On the effective date of final authorization, Minnesota will be authorized to carry out, in lieu of the Federal program, those provisions of the State's program which are analogous to the following provisions of the Federal program:

Federal requirement	Analogous state authority
● Termination of Interim Status July 15, 1985, 50 FR 28702-28755.	MN Rules 7001.0530; 7001.0090; 7001.0150; 7001.0500; 7001.0650; as amended and published in the State Register 4/16/84, and 7/19/89. Effective 4/22/84, and 7/25/89.
● Spent Pickle Liquor Correction August 3, 1987, 52 FR 28697.	MN Rules 7045.0135; as amended and published in the State Register 5/16/89. Effective 5/22/89.

Federal requirement	Analogous state authority
● Land Disposal Restrictions and California List Waste Restrictions*, November 7, 1986, 51 FR 40572-40654; as amended by June 4, 1987, 52 FR 21010-21018; and July 8, 1987, 52 FR 25760-25792; as amended by October 27, 1987, 52 FR 41295-41296; corrected by July 19, 1988, 53 FR 27164-27165.	MN Rules 7045.0020; 7045.0065; 7045.0075; 7045.0100; 7045.0120; 7045.0125; 7045.0127; 7045.0131; 7045.0135; 7045.0213; 7045.0214; 7045.0219; 7045.0365; 7045.0450; 7045.0458; 7045.0478; 7045.0552; 7045.0564; 7045.0584; 7045.1300; 7045.1305; 7045.1310; 7045.1315; 7045.1320; 7045.1325; 7045.1330; 7045.1350; 7045.1355; 7045.1360; 7045.1380; 7001.0150; 7001.0560; 7001.0730; 7001.0650; as amended and published in the State Register 11/22/88. Effective 11/28/88.
● Test Methods (SW-846) Clarification March 16, 1987, 52 FR 8072-8073.	MN Rule 7045.0065; as amended and published in the State Register 7/19/89. Effective 7/25/89.
● Definition of Solid Waste Correction June 5, 1987, 52 FR 21306-21307.	MN Rules 7045.0135; 7045.0665; as amended and published in the State Register 5/16/89. Effective 5/22/89.
● Codification Amendments (with the exception of the provisions for corrective action for injection wells) December 1, 1987, 52 FR 45788-45799*.	MN Rules 7001.0150; 7001.0170; 7001.0050; 7001.0560; 7045.0484; 7045.0485; 7001.0520; 7001.040; as amended and published in the State Register 4/16/84 and 5/16/89 effective 4/22/84 and 5/22/89.
● Miscellaneous Units December 10, 1987, 52 FR 46946-46965 as amended January 9, 1989 54 FR 615-617.	MN Rules 7045.0020; 7045.0450; 7045.0452; 7045.0460; 7045.0478; 7045.0484; 7045.0486; 7045.0488; 7045.0490; 7045.0492; 7045.0502; 7045.0508; 7045.0518; 7045.0539; 7001.0580; 7001.0625; as amended and published in the State Register 5/16/89. Effective 5/22/89.

* Indicates HSWA provisions

EPA shall administer any RCRA hazardous waste permits, or portions of permits, that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization. EPA has previously suspended issuance of permits for the other provisions on February 11, 1985, September 18, 1987, and on June 23, 1989, the effective dates of Minnesota's final authorizations for the RCRA base program and subsequent revisions.

This authorization includes authorization to Minnesota to impose certain land disposal prohibitions. Under 40 CFR 268.6, EPA may grant

petitions of specific duration to allow land disposal of certain hazardous wastes provided certain criteria are met. States that have authority to impose land disposal prohibitions may ultimately be authorized under RCRA section 3006 to grant petitions for such exemptions. However, EPA is currently requiring that these petitions be handled at EPA headquarters. It should be noted that Minnesota has its own procedures for petition submission and approval to allow land disposal of a prohibited waste. Therefore, the petitioner must satisfy both EPA and Minnesota requirements and be granted approval by both EPA and the State.

The public may submit written comments on EPA's immediate final decision until July 16, 1990. Minnesota's application for this program revision is available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of Minnesota's program revision shall become effective on August 14, 1990, unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of this immediate final rule or (2) a notice containing a response to the comment which either affirms that the immediate final decision takes effect or reverses the decision.

Minnesota is not authorized to operate the Federal program on Indian lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Effect of HSWA on Minnesota's Authorization

Prior to the Hazardous and Solid Waste Amendments to RCRA, a State with final authorization administered its hazardous waste program instead of, or entirely in lieu of, the Federal program. Except for enforcement provisions not applicable here, EPA no longer directly applied the Federal requirements in the authorized State and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent, Federal requirements were promulgated or enacted, the State was obligated to obtain equivalent authority within specified time frames. New Federal requirements usually did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006(g) of RCRA, 42 U.S.C. 6926(g), new HSWA requirements and prohibitions take effect in authorized

States at the same time they take effect in non-authorized States. EPA carries out those requirements and prohibitions directly in authorized and non-authorized States, including the issuance of full or partial HSWA permits, until EPA grants the State authorization to do so. States must still, at one point, adopt HSWA-related provisions as State law to retain final authorization. In the interim, the HSWA provisions apply in authorized States.

As a result of the HSWA, there is a dual State/Federal regulatory program in Minnesota. To the extent HSWA does not affect the authorized State program, the State program will operate in lieu of the Federal program. To the extent HSWA-related requirements are in effect, EPA will administer and enforce those HSWA requirements in Minnesota until the State is authorized for them. Among other things, this will entail the issuance of Federal RCRA permits for those HSWA requirements for which the State is not yet authorized in addition to the State permits. Any State requirement that EPA has reviewed, approved, and determined to be more stringent than HSWA provisions also remain in effect; thus the universe of the more stringent provisions in HSWA and the approved State program defines the applicable subtitle C requirements in Minnesota.

Once EPA authorizes Minnesota to carry out a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision or prohibition. Until that time, the State may assist EPA's implementation of the HSWA under a Cooperative Agreement.

Today's rulemaking includes authorization of Minnesota's program for several requirements implementing the HSWA. Those requirements implementing the HSWA are specified in the "Minnesota" section B of this notice. Any effective State requirement that is more stringent or broader in scope than a Federal HSWA provision will continue to remain in effect; thus regulated handlers must comply with any more stringent State requirements.

EPA published a FR notice that explains in detail the HSWA and its effect on authorized States (50 FR 28702-28755, July 15, 1985).

D. Decision

I conclude that Minnesota's program revision application meets all the statutory and regulatory requirements established by RCRA. Accordingly EPA grants Minnesota final authorization to operate its hazardous waste program as revised. Minnesota now has responsibility for permitting treatment,

storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program. This responsibility is subject to the limitations of Minnesota's program revision application and previously approved authorities. Minnesota also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under section 3008, 3013, and 7003 of RCRA.

E. Codification

EPA codifies authorized State programs in part 272 of 40 CFR. The purpose of codification is to provide notice to the public of the scope of the authorized program in each State. Codification of the Minnesota program revisions will be completed at a later date.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Minnesota's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a) 3006, and 7004(b)

of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926 and 6974(b)).

Dated: May 1, 1990.

Valdas V. Adamkus,
Regional Administrator.

[FR Doc. 90-13932 Filed 6-14-90; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

46 CFR Parts 52, 54, 61, and 63

[CGD 88-057]

RIN 2115-AD11

Automatic Auxiliary Boilers; Revision of Requirements

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the requirements for automatic auxiliary boilers contained in 46 CFR part 63. The scope and applicability of part 63 is being clarified to minimize confusion, and industry consensus standards are being used to replace existing regulations where these standards provide an equivalent level of safety. Also, a specific safety provision is being added to reduce the possibility of an explosion during the postpurge cycle. The end result of this rulemaking is a reduction in costs and time delays for the approval process without compromising safety.

DATES: This regulation is effective July 16, 1990. The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Federal Register as of July 16, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Randall N. Crenwelge, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security, and Environmental Protection, (202) 267-2206.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking (NPRM) was published in the *Federal Register* on November 13, 1989 (54 FR 47228). Interested persons were requested to submit comments, and two comment letters consisting of six comments were received. No requests for a public hearing were received, nor was one held.

Drafting Information

The principal persons involved in drafting this rulemaking are Mr. Randall N. Crenwelge, Project Manager, and Lieutenant Commander Don M. Wrye, Project Counsel, Office of Chief Counsel.

Background

In 1965, the Coast Guard recognized the need to develop guidance for plan review of merchant vessels having centralized control systems and automatic boilers. A series of Navigation and Vessel Inspection Circulars (NVICs) were issued to express policy and provide guidance for field inspection offices. These NVICs were used to ensure a general level of safety for automatic auxiliary boilers at least equal to that required for manually operated auxiliary boilers.

Prior to 1968, only automatic steam boilers operating at pressures exceeding 30 pounds per square inch and used for purposes other than propulsion were covered by regulations under 46 CFR 162.026. In 1968, the Coast Guard adopted new marine engineering regulations in 46 CFR parts 50 through 63. In these regulations, specific industrial codes, standards, and specifications were incorporated by reference for the design, construction, fabrication, operation, maintenance, and repair of boilers, pressure vessels, pressure piping, and propelling and auxiliary machinery.

At the time part 63 was adopted, an industry standard was not available for automatic auxiliary boilers that the Coast Guard considered suitable for incorporation into the regulations. While portions of part 63 were derived from the experience the Coast Guard had gained from implementing the NVICs and § 162.026, most of the regulations were developed to express new requirements.

Since the publication of the marine engineering regulations in 1968, the American Society of Mechanical Engineers (ASME) has developed and published a standard titled "Controls and Safety Devices for Automatically Fired Boilers," which has been adopted by the American National Standards Institute (ANSI). This standard has also been adopted into law by many federal and state regulatory agencies. The Coast Guard has reviewed this document and concluded that it contains many provisions which are suitable for incorporation into this rulemaking. These are included along with design parameters for automatic auxiliary boilers which are unique to the marine environment.

Discussion of the Regulations

a. Scope and Applicability

In this rulemaking, the scope of part 63 is being clarified. In the previous regulations, automatic auxiliary boilers were divided into three broad categories

which were large automatic auxiliary boilers, small automatic auxiliary boilers, and electric storage tank hot water supply boilers. It was not clear from the language which types of boilers and heating equipment fell within the scope of the three broad categories. In this rulemaking, boilers are classified by their service, control systems, pressure and temperature boundaries, heat input ratings, and firing medium. The services of automatic auxiliary boilers are clearly defined. Those control systems and automatic boilers which are governed by other parts and sections of the regulations are specified.

Boilers governed by this rulemaking include large and small auxiliary boilers, automatic heating boilers, automatic waste heat boilers, donkey boilers, miniature boilers, electric boilers, fired thermal fluid heaters, automatic incinerators, and electric hot water supply boilers. However, only automatic auxiliary boilers having firing rates of less than 12,500,000 Btu/hr. are covered in this rulemaking. Power boilers and auxiliary boilers having firing rates of 12,500,000 Btu/hr. and above must meet the requirements of part 52, and their control systems must meet the requirements of part 62. Along with revising part 63, this rulemaking amends certain regulations in part 52 to cross-reference requirements in parts 61, 62, or 63, as appropriate, based upon the classification criteria discussed.

New sections have been added to part 63 for incinerators and exhaust gas boilers. The Coast Guard is expecting a large influx of incinerator approval requests due to the adoption of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78 Annex V, Garbage Disposal Restrictions).

b. Safety

In accordance with § 63.05-25(b)(3) of the previous regulations, an auxiliary boiler's control system must ensure that the length of the postpurge period is at least 15 seconds after the fuel valve is closed. The postpurge period should automatically occur when a boiler is being secured; however, when an emergency trip occurs, the air flow to the boiler should not automatically increase. In 1983, an auxiliary boiler explosion occurred on the SS PRESIDENT LINCOLN. A Coast Guard investigation determined that after repeated attempts to light off, an increase in air flow occurred during the automatic postpurge cycle creating an explosive atmosphere. A safety control system requirement added in § 63.20-1(a) of this rulemaking requires

postpurge in such cases to be under manual control.

In addition to including the requirement in the revised part 63 for manual control for postpurge when an emergency trip has occurred, this rulemaking amends part 61. Section 61.30-20 is amended and subpart 61.35 added to describe the tests and inspections required to verify the design, construction, installation, and operation of all controls, safety devices, and control system equipment for automatic auxiliary boilers.

c. Adoption of Industry Consensus Standards

An industry consensus standard titled "Controls and Safety Devices for Automatically-Fired Boilers," ANSI/ASME CSD-1-1982/CSD-1a-1984, has been developed by an American Society of Mechanical Engineers (ASME) committee composed of independent product certification agencies, insurance companies, control system manufacturers, industry associations, and other regulatory agencies, and has been adopted by ANSI. This standard covers automatic control system design, construction, installation, certification, and testing. It contains a self-certification procedure which is performed by the manufacturer, and it is currently used by industry and other regulatory agencies. The Coast Guard is incorporating this industry standard by reference and eliminating the burden of detailed plan review and component inspections. Certification by the manufacturers that the automatic auxiliary boiler and its control systems meet the requirements of part 63 indicates compliance with the regulations.

The Coast Guard is also updating three industry standards previously incorporated by reference in part 63 and adding two additional standards. The standards updated to account for more recent editions or revisions are ANSI/UL-174, "Standard for Household Electric Storage Tank Water Heaters," ANSI/UL-296, "Standard for Oil Burners," and ANSI/UL-343, "Standard for Pumps for Oil Burning Appliances." The additional standards are ANSI/UL-1453, "Standards for Electric Booster and Commercial Storage Tank Water Heaters," and ANSI/AGA Z21.22-88, "Relief Valves and Automatic Shutoff Devices for Hot Water Supply Systems." These additional standards are incorporated to provide for industry standards relating to pressure and temperature relief devices, temperature controls, and heating elements, as appropriate, for electric hot water supply boilers.

Discussion of Comments

One comment stated that proposed section 61.35-3(a)(3) should be amended to include the requirement to verify the leak-tightness of the fuel shutoff valves at initial and subsequent tests. The comment suggested that objective criteria such as "no visible leakage into the burner," or that a test method, such as measuring pressure drop in the supply line over time, should be provided. Existing regulations in 46 CFR 56.97-1(b) require an initial leak-tightness test for each piping system covered in part 56. Boiler fuel oil service systems are covered in § 56.50-65. For consistency, § 61.35-3(a)(3) has been amended in the final rule by requiring verification that there is no visible leakage from valves into the burner(s).

Another comment stated that proposed § 63.15-3(b) should allow the use of steam fuel oil heaters. Some plants can be ignited from the cold condition using unheated diesel fuel, and subsequently shifted to steam-heated heavy fuel. In either case, temperature or viscosity control should be allowed. The Coast Guard agrees with these provisions. The requirement in § 63.15-3(b) which makes the use of a thermostatically-controlled electric oil heater mandatory has been changed to allow it as an option. When used, an electric heater must meet the requirements of 46 CFR subpart 111.85. Temperature or viscosity control is permitted. The comment further stated that the requirements in § 111.85-1(d) for a low level device are not clear. The comment asked whether this section required shutoff of the electric heater when the heater is not full of oil? Yes, the purpose of the low fluid level device which is required by § 111.85-1(d) is to ensure that the electric oil immersion heater element is immersed in oil when energized. Upon detecting a low fluid level outside the heater, the device opens all conductors to the heater.

Another comment stated that § 63.15-3 should be amended to require interlocks which would prevent passing diesel oil through the fuel heater, or alternately would not allow the boiler to fire if diesel oil is lined up to the heater. The Coast Guard disagrees. Interlocks are not necessary since § 58.01-15 of this chapter currently prohibits the interconnection of fuel oil piping in this manner.

Another comment stated that § 63.15-7 should be amended for the special case of periodically unattended machinery spaces. The comment noted that an auxiliary boiler trip alarm is required by 46 CFR Table 62.35-50 and

that in this case, the audible alarm requirement of § 63.15-7 should be satisfied by the alarm required by Table 62.35-50. The Coast Guard agrees. Section 63.15-7 has been amended to indicate that the requirements of Table 62.35-50 satisfy the requirements of this section for the special case of periodically unattended machinery spaces.

Another comment stated that § 63.25-7 should be amended to include a requirement for monitoring and alarm for soot fires in exhaust gas boilers. The Coast Guard agrees. Soot fires can rage unnoticed for several minutes and can result in boiler meltdowns. Section 63.25-7 has been amended to include this requirement.

A final comment stated that § 61.35-3(a)(7) is too detailed in specifying the method to test the draft limit control. The comment also stated that the test procedure specified to block the draft opening is not acceptable for many boilers and could be hazardous to personnel. The Coast Guard agrees. This sentence has been revised in the final rule to require testing of the draft loss interlock switch to ensure proper operation.

Regulatory Evaluation

The Coast Guard considers these regulations to be nonmajor under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of these regulations has been found to be so minimal that further evaluation is unnecessary. Since the impact of this rulemaking is minimal, the Coast Guard certifies that it does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rulemaking contains information collection and recordkeeping requirements in § 63.10-1. They have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and included under OMB control number 2115-0142 for parts 50 through 64 displayed in § 50.01-20(b).

Environmental Impact

The Coast Guard has considered the environmental impact of these regulations, and in accordance with section 2.B.2. of Commandant Instruction M16475.1B, has determined that this rulemaking is categorically excluded from further environmental documentation. A Categorical Exclusion Determination Statement has been

prepared and placed in the rulemaking docket.

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

46 CFR Parts 52, 54 and 61

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 63

Incorporation by reference, Reporting and recordkeeping requirements, Vessels.

In consideration of the foregoing, chapter I of title 46, Code of Federal Regulations, is amended as follows.

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

2. Section 52.01-10 is amended by revising paragraph (b) and adding new paragraph (c) to read as follows:

§ 52.01-10 Automatic controls.

(b) Each automatically controlled auxiliary boiler having a heat input rating of less than 12,500,000 Btu/hr. (3.66 megawatts) must meet the requirements of part 63 of this chapter.

(c) Each automatically controlled auxiliary boiler with a heat input rating of 12,500,000 Btu/hr. (3.66 megawatts) or above, must meet the requirements for automatic safety controls in part 62 of this chapter.

3. Section 52.01-135 is amended by revising paragraph (d) to read as follows:

§ 52.01-135 Inspection and tests (modifies PG-90 through PG-100).

(d) *Operating tests.* In addition to hydrostatic tests prescribed in paragraph (c) of this section, automatically controlled auxiliary boilers must be subjected to operating tests as specified in §§ 61.30-20, 61.35-1, 61.35-3, 62.30-10, 63.15-9, 63.25-3, and 63.25-5 of this chapter, as appropriate, or as directed by the Officer in Charge, Marine Inspection, for propulsion boilers. These tests are to be performed after final installation.

4. Section 52.25-15 is amended by adding new paragraph (d) to read as follows:

§ 52.25-15 Fired thermal fluid heaters.

(d) Each fired thermal fluid heater must be tested and inspected in accordance with the requirements of subpart 61.30 of this chapter.

5. Section 52.25-20 is revised to read as follows:

§ 52.25-20 Exhaust gas boilers.

Exhaust gas boilers with a maximum allowable working pressure greater than 103 kPa gage (15 psig) or an operating temperature greater than 454 °C. (850 °F.) must be designed, constructed, inspected, tested and stamped in accordance with the applicable provisions in this part. The design temperature of parts exposed to the exhaust gas must be the maximum temperature that could normally be produced by the source of the exhaust gas. This temperature must be verified by testing or by the manufacturer of the engine or other equipment producing the exhaust. Automatic exhaust gas boiler control systems must be designed, constructed, tested, and inspected in accordance with § 63.25-7 of this chapter.

PART 54—[AMENDED]

6. The authority citation for part 54 continues to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

7. Section 54.01-5 is amended by revising Table 54.01-5(A) to read as follows:

TABLE 54.01-5(A).—REGULATION REFERENCE FOR BOILERS, PRESSURE VESSELS, AND THERMAL UNITS

Service and pressure temperature boundaries	Part of subchapter regulating mechanical design	Part of subchapter regulating automatic control
Main (power) boiler: All.....	52	62
Pressure vessel: All.....	54	NA
Fired auxiliary boiler ¹ (combustion products or electricity):		
(a) Steam:		
More than 103 kPa (15 psig).....	52	² 62 or 63
Equal to or less than 103 kPa (15 psig).....	53	63

TABLE 54.01-5(A).—REGULATION REFERENCE FOR BOILERS, PRESSURE VESSELS, AND THERMAL UNITS—Continued

Service and pressure temperature boundaries	Part of subchapter regulating mechanical design	Part of subchapter regulating automatic control
(b) Hot water heating: More than 689 kPa (100 psig) or 121 °C (250 °F)	52	63
Equal to or less than 689 kPa (100 psig) and 121 °C (250 °F)	53	63
(c) Hot water supply: More than 689 kPa (100 psig) or 121 °C (250 °F)	52	63
Equal to or less than 689 kPa (100 psig) and 121 °C (250 °F)	53	63
Other:		
(a) Fired thermal fluid heaters: All	52	63
(b) Unfired steam boiler: More than 206 kPa (30 psig) or 454 °C (850 °F)	52	NA
Equal to or less than 206 kPa (30 psig) and 454 °C (850 °F)	54	NA
(c) Evaporators and heat exchangers: More than 103 kPa (15 Sig)	54	NA
(d) Unfired hot water supply or heating boiler: More than 103 kPa (15 psig)	54	NA

* Including exhaust gas types.

* Boilers with heat input ratings $\geq 12,500,000$ Btu/hr. must have controls that meet Part 62. Boilers with heat input ratings $< 12,500,000$ Btu/hr. must have controls that meet Part 63.

* Temperature of working fluid.

* Relief device is required even if designed for less than 103 kPa (15 psig).

PART 61—[AMENDED]

8. The authority citation for part 61 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

9. Section 61.30-20 is revised to read as follows:

§ 61.30-20 Automatic control and safety tests.

Operational tests and checks of all safety and limit controls, combustion controls, programming controls, and safety relief valves must be conducted by the owner, chief engineer, or person in charge at the inspection for

certification, and when directed by the Officer in Charge, Marine Inspection, to determine that the control components and safety devices are functioning properly and are in satisfactory operating condition. These tests and checks must be conducted in the presence of a marine inspector and must include the following: proper prepurge, burner ignition sequence checks, operation of the combustion controls, limit controls, fluid flow controls, fluid level controls, high temperature control, proper postpurge control, and verification of the flame safeguard.

10. Subpart 61.35 is added to read as follows:

Subpart 61.35—Design Verification and Periodic Testing for Automatic Auxiliary Boilers

Sec.

61.35-1 General.

61.35-3 Required tests and checks.

Subpart 61.35—Design Verification and Periodic Testing for Automatic Auxiliary Boilers

§ 61.35-1 General.

(a) All automatic auxiliary boilers except fired thermal fluid heaters must be tested and inspected in accordance with this subpart and subpart 61.05 of this part.

(b) Fired thermal fluid heaters must be tested and inspected in accordance with subpart 61.30 of this part.

(c) All controls, safety devices, and other control system equipment must be tested and inspected to verify their proper design, construction, installation, and operation.

(d) All tests must be performed after installation of the automatic auxiliary boiler and its control system(s) aboard the vessel.

(e) As far as practicable, test techniques must not simulate monitored system conditions by misadjustment, artificial signals, improper wiring, tampering, or revision of the system tested. The use of a synthesized signal or condition applied to a sensor is acceptable if the required test equipment is maintained in good working order and is periodically calibrated. Proper operation and proper calibration of test equipment must be demonstrated to the Officer in Charge, Marine Inspection.

§ 61.35-3 Required tests and checks.

(a) Tests and checks must include the following:

(1) *Safety (Programming) controls.* Safety controls must control and cycle the unit in the proper manner and

sequence. Proper prepurge, ignition, postpurge, and modulation must be verified. All time intervals must be verified.

(2) *Flame safeguard.* The flame safeguard system must be tested by causing flame and ignition failures. Operation of the audible alarm and visible indicator must be verified. The shutdown times must be verified.

(3) *Fuel supply controls.* Satisfactory shutdown operation of the two fuel control solenoid valves must be verified. No visible leakage from the valves into the burner(s) must be verified.

(4) *Fuel oil pressure limit control.* A safety shutdown must be initiated by lowering the fuel oil pressure below the value required for safe combustion. System shutdown and the need for manual reset prior to automatic startup must be verified.

(5) *Fuel oil temperature limit control.* (Units designed to burn heavy fuel oil.) A safety shutdown must be initiated by lowering the fuel oil temperature below the designed temperature. System shutdown and the need for manual reset prior to automatic startup must be verified.

(6) *Combustion controls.* Smooth and stable operation of the combustion controls must be verified.

(7) *Draft limit control.* The draft loss interlock switch must be tested to ensure proper operation. The draft limit control must cause burner shutdown and prevent startup when an inadequate air volume is supplied to the burner(s).

(8) *Limit controls.* Shutdown caused by the limit controls must be verified.

(9) *Water level controls.* Water level controls must be tested by slowly lowering the water level in the boiler. Each operating water level control must be individually tested. The upper low water cutoff and the lower low water cutoff must each be tested. The audible alarm and visible indicator associated with the lower low water cutoff must be tested. The manual reset device must be tested after the lower low water cutoff has been activated.

(10) *Feed water flow controls.* The feed water flow limit device (found on steam boilers and water heaters without water level controls) must be tested by interrupting the feed water supply. Manual reset must be required prior to restarting the boiler.

(11) *Low voltage test.* The fuel supply to the burners must automatically shut off when the supply voltage is lowered.

(12) *Switches.* All switches must be tested to verify satisfactory operation.

11. Part 63 is revised to read as follows:

PART 63—AUTOMATIC AUXILIARY BOILERS**Subpart 63.01—General Provisions**

Sec.

63.01-1 Purpose.

63.01-3 Scope and applicability.

Subpart 63.05—Reference Specifications

63.05-1 Incorporation by reference.

Subpart 63.10—Miscellaneous Submittals

63.10-1 Test procedures and certification report.

Subpart 63.15—General Requirements

63.15-1 General.

63.15-3 Fuel system.

63.15-5 Strainers.

63.15-7 Alarms.

63.15-9 Inspections and tests.

Subpart 63.20—Additional Control System Requirements

63.20-1 Specific control system requirements.

Subpart 63.25—Requirements for Specific Types of Automatic Auxiliary Boilers

63.25-1 Small automatic auxiliary boilers.

63.25-3 Electric hot water supply boilers.

63.25-5 Fired thermal fluid heaters.

63.25-7 Exhaust gas boilers.

63.25-9 Incinerators.

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart 63.01—General Provisions**§ 63.01-1 Purpose.**

This part specifies the minimum requirements for safety for each automatic auxiliary boiler, including its design, construction, testing, and operation.

§ 63.01-3 Scope and applicability.

(a) This part contains the requirements for automatic auxiliary boilers, including their controls, control system components, electrical devices, safety devices, and accessories. Types of automatic auxiliary boilers which are covered include large and small automatic auxiliary boilers, automatic heating boilers, automatic waste heat boilers, donkey boilers, miniature boilers, electric boilers, fired thermal fluid heaters, automatic incinerators, and electric hot water supply boilers. Automatic auxiliary boilers are classified by their service, control systems, pressure and temperature boundaries, heat input ratings, and firing mediums as follows:

(1) Automatic auxiliary boilers listed in Table 54.01-5(A) of this chapter which reference this part for regulation of their automatic controls.

(2) Automatic control systems for automatic auxiliary boilers having a

heat input rating of less than 12,500,000 Btu/hr. (3.66 megawatts)(20 gph).

(3) Electric hot water supply boilers (heaters) containing electric heating elements rated at 600 volts or less.

(4) Exhaust gas boilers, and their controls and accessories used to heat water and/or generate steam.

(5) Incinerators (and their control systems) used for the generation of steam and/or oxidation of ordinary waste materials and garbage. This part also includes incinerators which serve as automatic auxiliary boilers.

(6) Fired thermal fluid heaters and their controls.

(b) *Exceptions.* Automatic boilers having heat input ratings of 12,500,000 Btu/hr. (3.66 megawatts) (20 gph) and above must meet the requirements of part 52 of this chapter. Their control systems must meet the requirements of part 62 of this chapter. Electric cooking equipment must comply with § 111.77-3 of this chapter. Electric oil immersion heaters must comply with part 111, subpart 111.85 of this chapter. Electric air heating equipment must comply with part 111, subpart 111.87 of this chapter.

Subpart 63.05—Reference Specifications**§ 63.05-1 Incorporation by reference.**

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the Federal Register and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH-2), 2100 Second Street SW., Washington, DC 20593-0001, and is available from the sources listed in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society of Mechanical Engineers

345 East 47th Street, New York, NY 10017

ANSI/ASME CSD-1-1982 with Addenda CSD-1a-1984, Controls and Safety Devices for Automatically Fired Boilers, November 15, 1984

63.10-1;

63.15-1;

63.20

Underwriters' Laboratories, Inc. (UL)

333 Pfingsten Road, Northbrook, Illinois 60062

ANSI/UL-174, Standard for Household Electric Storage Tank Water Heaters, Seventh Edition, April 18, 1983 (Revisions through March 1988)

63.25-3

ANSI/UL-296, Standard for Oil Burners, Seventh Edition, August 22, 1980 (Revisions through August 1985)

63.15-5

ANSI/UL-343, Standard for Pumps for Oil Burning Appliances, Sixth Edition, July 17, 1986

63.15-5

ANSI/UL-1453, Standard for Electric Booster and Commercial Storage Tank Water Heaters, Third Edition, February 5, 1988

63.25-3

American Gas Association

1515 Wilson Boulevard, Arlington, Virginia 22209

ANSI/AGA Z21.22-86 Relief Valves and Automatic Shut-off Devices for Hot Water Supply Systems, March 28, 1986

63.25-3

Subpart 63.10—Miscellaneous Submittals**§ 63.10-1 Test procedures and certification report.**

Two (2) copies of the following items must be submitted to the Commanding Officer, U.S. Coast Guard Marine Safety Center, 400 Seventh Street SW., Washington, DC 20590-0001.

(a) Detailed instructions for operationally testing each automatic auxiliary boiler, its controls, and safety devices.

(b) A certification report for each automatic auxiliary boiler which:

(1) Meets paragraph CG-510 of ANSI/ASME CSD-1a; and

(2) Certifies that each automatic auxiliary boiler, its controls, and safety devices comply with the additional requirements of this part.

Subpart 63.15—General Requirements**§ 63.15-1 General.**

(a) Each automatic auxiliary boiler must be designed and constructed for its intended service according to the requirements of the parts referenced in § 54.01-5, Table 54.01-5(A) of this chapter.

(b) Controls and safety devices for automatic auxiliary boilers must meet the applicable requirements of ANSI/ASME CSD-1/CSD-1a, except Paragraph CG-310.

(c) All devices and components of an automatic auxiliary boiler must satisfactorily operate within the marine environment. The boiler must satisfactorily operate with a momentary roll of 30°, a list of 15°, and a permanent trim of 5° with it installed in a position as specified by the manufacturer.

(d) An electrical control used to shut down the automatic auxiliary boiler must be installed in accordance with § 58.01-25 of this chapter. This device must stop the fuel supply to the fuel burning equipment.

(e) Mercury tube actuated controls are prohibited from being installed and used on automatic auxiliary boilers.

§ 63.15-3 Fuel system.

(a) Firing of an automatic auxiliary boiler by natural gas is prohibited unless specifically approved by the Marine Safety Center.

(b) Heated heavy fuel oil may be used provided the heaters are equipped with a high temperature limiting device that shuts off the heating source at a temperature below the flashpoint of the oil and is manually reset. When a thermostatically-controlled electric oil heater and a level device is used, it must meet the requirements of part 111, subpart 111.85 of this chapter.

Note: An auxiliary boiler may be safely ignited from the cold condition using unheated diesel or light fuel oil and subsequently shifted to heated heavy fuel.

(c) The fuel oil service pump and its piping system must be designed in accordance with § 56.50-65 of this chapter. All materials must meet the requirements of part 56, subpart 56.60 of this chapter. The use of cast iron or malleable iron is prohibited.

(d) The fuel oil service system (including the pump) must meet the pressure classification and design criteria found in § 56.04-2, Table 56.04-2 of this chapter.

(e) When properly selected for the intended service, fuel pumps meeting the performance and test requirements of ANSI/UL 343 meet the requirements of this section.

§ 63.15-5 Strainers.

(a) Strainers must be installed in the fuel supply line. Each strainer must be self-cleaning, fitted with a bypass, or be capable of being cleaned without interrupting the fuel oil supply.

(b) The strainer must not allow a quantity of air to be trapped inside which would affect the rate of fuel flow to the burner or reduce the effective area of the straining element.

(c) The strainer must meet the requirements for strainers found in ANSI/UL 298 and the requirements for

fluid conditioner fittings found in § 56.15-5 of this chapter.

§ 63.15-7 Alarms.

(a) An audible alarm must automatically sound when a flame safety system shutdown occurs. A visible indicator must indicate that the shutdown was caused by the flame safety system.

(b) Means must be provided to silence the audible alarm. The visible indicators must require manual reset.

(c) For steam boilers, operation of the lower low water cutoff must automatically sound an audible alarm. A visual indicator must indicate that the shutdown was caused by low water.

(d) For a periodically unattended machinery space, the auxiliary boiler trip alarm required by 46 CFR 62.35-50, Table 62.35-50 satisfies the requirements for the audible alarms specified in this section.

§ 63.15-9 Inspections and tests.

All automatic auxiliary boilers must be inspected and tested in accordance with the requirements of part 61 of this chapter.

Subpart 63.20—Additional Control System Requirements

§ 63.20-1 Specific control system requirements.

In addition to the requirements found in ANSI/ASME CSD-1/CSD-1a, the following requirements apply for specific control systems:

(a) *Primary safety control system.* Following emergency safety trip control operation, the air flow to the boiler must not automatically increase. For this condition, postpurge must be accomplished manually.

(b) *Combustion control system.* A low fire interlock must ensure low fire start when variable firing rates are used.

(c) *Water level controls and low water cutoff controls.* Water level controls must be constructed and located to minimize the effects of vessel roll and pitch. Float chamber low water cutoff controls using stuffing boxes to transmit the motion of the float from the chamber to the external switches are prohibited. No outlet connection other than pressure controls, water columns, drains, and steam gages may be installed on the float chamber or on the pipes connecting the float chamber to the boiler. The water inlet valve must not feed water into the boiler through the float chamber. The boiler feed piping must comply with the applicable requirements of § 56.50-30 of this chapter.

Subpart 63.25—Requirements for Specific Types of Automatic Auxiliary Boilers

§ 63.25-1 Small automatic auxiliary boilers.

Small automatic auxiliary boilers, defined as having a heat input rating of 400,000 Btu/hr. and less (117 kilowatts and less) (3 gph and less), must meet the following additional requirements.

(a) Small automatic auxiliary boilers must be equipped with a visual indicator which indicates when the low water cutoff has activated.

(b) A prepurge period of a sufficient duration to ensure at least four changes of air in the combustion chamber and stack, but not less than 15 seconds must be provided. Ignition must occur only before or simultaneously with the opening of the fuel oil valve.

§ 63.25-3 Electric hot water supply boilers.

(a) Electric hot water supply boilers which have a capacity not greater than 454 liters (120 U.S. gallons), a heat input rate not greater than 200,000 Btu/hr. (58.6 kilowatts), meet the requirements of ANSI/UL 174 or ANSI/UL 1453, and are protected by the relief device(s) required in § 53.05-2 of this chapter do not have to meet any other requirements of this section except the periodic testing required by paragraph (j) of this section. Electric hot water supply boilers which meet the requirements of UL 174 may have temperature-pressure relief valves that meet the requirements of ANSI/AGA Z21.22 in lieu of subpart 53.05 of this chapter.

(b) Each hot water supply boiler must be constructed in accordance with the applicable requirements of part 52 or part 53 of this chapter.

(c) Branch circuit conductors for hot water supply boilers which have a capacity not greater than 454 liters (120 U.S. gallons) must have a current carrying capacity of not less than 125 percent of the current rating of the appliance. Branch circuit conductors for hot water supply boilers with capacities of more than 454 liters (120 U.S. gallons) must have a current carrying capacity of not less than 100 percent of the current rating of the appliance. Wiring materials and methods must comply with part 111, subpart 111.60 of this chapter. A hot water supply boiler having a current rating of more than 48 amperes and employing resistance type heating elements must have the heating elements on subdivided circuits. Each subdivided load, except for an electric hot water supply boiler employing a resistance type immersion electric

heating element, must not exceed 48 amperes, and it must be protected at not more than 60 amperes. An electric hot water supply boiler employing a resistance type immersion electric heating element may be subdivided into circuits not exceeding 120 amperes and protected at not more than 150 amperes. Overcurrent protection devices must comply with part 111, subpart 111.50 of this chapter.

(d) Heating elements must be insulated electrically from the water being heated, guarded against mechanical injury and contact with outside objects, and securely supported. Consideration must be given to sagging, opening, and other adverse conditions of the elements resulting from continuous heating, and flexion of supports and wiring due to alternate heating and cooling. Wrap-around elements must be secured in a manner which prevents loosening.

(e) Iron and steel parts must be protected against corrosion by enameling, galvanizing, or plating. Iron and steel storage tanks having a wall thickness less than 6.4mm (¼-inch) must have the inside surface protected against corrosion.

(f) Each heating element must have a temperature regulating device. The device must limit the water from obtaining a temperature greater than 90 °C. (194 °F.). If the control has a marked off position, the control must disconnect the heating element from all ungrounded conductors, and it must not respond to temperature when placed in the off position.

(g) An independent temperature limiting device must prevent the water in the upper 25 percent of the tank from attaining a temperature higher than 99 °C. (210 °F.). This device must require manual resetting, be trip free from the operating means, open all ungrounded power supply conductors to the heater, and be readily accessible.

(h) Electric hot water supply boilers must have pressure and temperature relieving valves. The valve temperature setting must not be more than 99 °C. (210 °F.). The pressure relief setting must not be higher than the marked working pressure of the boiler. The pressure and temperature relief valves must meet part 53, subpart 53.05 of this chapter. The pressure and temperature relief valves may be combined into a pressure-temperature relief valve.

(i) Electric hot water supply boilers must be marked in a visible location with the manufacturer's name, model or other identification number, water capacity, and the electrical ratings of

each heating element. When two or more heating elements are installed, the maximum wattage or current consumption must be indicated. The cold water inlet and the hot water outlet must each be clearly distinguished or marked for identification purposes.

(j) All electric hot water supply boilers must have their pressure relief devices tested as required by part 52 or part 53 of this chapter, as applicable. Electric hot water supply boilers which meet the requirements of ANSI/UL 174 or ANSI/UL 1453 and have heating elements, temperature regulating controls, and temperature limiting controls are satisfactory for installation and service without further installation testing. All electric hot water supply boilers not meeting the requirements of ANSI/UL 174 or ANSI/UL 1453 must have their heating elements, temperature regulating controls, and temperature limiting controls tested by the marine inspector at the time of installation. All electric hot water supply boilers must have their heating elements, temperature regulating controls, and temperature limiting controls tested by the marine inspector at each inspection for certification and more often if necessary, to determine that the heating elements and controls are in a safe and satisfactory operating condition.

§ 63.25-5 Fired thermal fluid heaters.

(a) *Construction.* Fired thermal fluid heaters must meet the requirements of part 52 of this chapter, as applicable.

(b) *Controls.* Fired thermal fluid heaters must have a low fluid level cutout device or a low flow device. When the rate of fluid flow through the heating coils is insufficient to ensure proper heat transfer, the device must cut off the fuel supply to the burner. If the fluid temperature exceeds the designed maximum operating temperature, a high temperature limit device must cut off the fuel supply to the burner. These devices must be of the manual reset type.

§ 63.25-7 Exhaust gas boilers.

(a) *Construction.* An auxiliary exhaust gas boiler must meet the applicable construction requirements of part 52 or part 53 of this chapter as determined from § 54.01-5, Table 54.01-5(A) of this chapter.

(b) *Controls.* Each drum type exhaust gas steam boiler must have a feed water control system. The system must automatically supply the required amount of feed water and maintain it at the proper level. For boilers without a fixed water level, the control system must supply the feed water at a rate

sufficient to ensure proper heat transfer. The system must adequately fill the boiler when cold.

(c) *Alarms.* When a condition arises which results in inadequate heat transfer, a high temperature alarm or low flow alarm must be activated. An audible alarm must automatically sound, and a visual indicator must indicate when the fluid temperature exceeds the maximum operating temperature or when the fluid/steam flowing through the heat exchanger is insufficient to ensure proper heat transfer. Additionally, an audible alarm must automatically sound, and a visual indicator must indicate when a soot fire is present in the exhaust gas boiler's uptake.

§ 63.25-9 Incinerators.

(a) *Construction.* Incinerators which produce hot water or generate steam must meet the requirements of part 52 or part 53 of this chapter, as applicable.

(b) A high temperature limit device must be installed in the combustion chamber and flue gas duct of the incinerator. Each limit device must be of the manual reset type and cause an automatic shutdown of the incinerator when a temperature higher than the maximum operating temperature is detected.

Dated: May 30, 1990.

D.H. Whitten,

Captain, U.S. Coast Guard, Acting Chief,
Office of Marine Safety, Security and
Environmental Protection.

[FR Doc. 90-13748 Filed 6-14-90; 8:45 am]

BILLING CODE 4910-14-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87-02; Notice 3]

RIN 2127-AA95

Federal Motor Vehicle Safety Standards; Seat Belt Assembly Anchorages

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: NHTSA recently published a final rule that, among other things, clarified the test procedures used to determine if seats with manual lap/shoulder safety belts or automatic safety belts comply with the anchorage

strength requirements. This rule was intended to make clear that the anchorages for these safety belts are tested by simultaneously applying 3,000 pound forces to the upper torso belt and lap belt portions, using specified body blocks to apply this load, instead of by simultaneously applying a 3,000 pound force to the upper torso belt portion and a 5,000 pound force to the lap belt portion. However, NHTSA inadvertently omitted the requirements for the upper torso belt anchorages from this final rule. This notice adds language to correct this oversight.

DATES: The amendment made by this notice takes effect on September 1, 1992. This is the date on which the erroneous language in the April 30, 1990 final rule would have become effective.

FOR FURTHER INFORMATION CONTACT: Daniel Cohen, Chief, Occupant Protection Group, NRM-12, Room 5320, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Mr. Cohen can be reached by telephone at (202) 366-4999.

SUPPLEMENTARY INFORMATION. On April 30, 1990 [55 FR 17970], NHTSA published a final rule amending Standard No. 210, *Seat Belt Assembly Anchorages* (49 CFR 571.210). Among other things, that rule clarified that the anchorages for manual lap/shoulder safety belts and automatic safety belts are tested for compliance with the anchorage strength requirements by simultaneously applying 3,000 pound forces to the upper torso and lap belt portions of the safety belt, instead of by simultaneously applying a 3,000 pound force to the upper torso belt portion and a 5,000 pound force to the lap belt portion. However, the final rule inadvertently omitted the requirement for applying the 3,000 pound force to the upper torso belt portion of the safety belt. This notice corrects that oversight.

It was clear that this omission was an oversight, because the agency proposed to apply 3,000 pound forces simultaneously to the upper torso belt portion and the lap belt portion of the safety belt and nothing in the preamble to the final rule indicated an agency intention to exempt anchorages for the upper torso belt portions of safety belts from the anchorage strength requirements. Moreover, no commenter suggested that it would be appropriate to exempt upper torso belt anchorages for manual lap/shoulder belts from the anchorage strength requirements. Hence, the agency finds for good cause that notice and opportunity for comment on this correction are unnecessary. The

agency also finds that this correction should become effective on September 1, 1992, the date on which the other requirements in the April 30, 1990 final rule will become effective.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR 571.210 is amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.210 [Amended]

2. S5.2 of Standard No. 210 is revised to read as follows:

S5.2 *Seats with Type 2 or automatic seat belt anchorages.* With the seat in its rearmost position, apply forces of 3,000 pounds in the direction in which the seat faces simultaneously to a pelvic body block, as described in Figure 2A, and an upper torso body block, as described in Figure 3, restrained by a material whose breaking strength is equal to or greater than the breaking strength of the webbing for the seat belt assembly installed as original equipment at that seating position, which material is installed so as to duplicate the geometry of any of the seat belt assemblies identified in S4.2.2 of this standard that are installed as original equipment at any designated seating positions on the seat, in a plane parallel to the longitudinal centerline of the vehicle, with an initial force application angle of not less than 5 degrees more than 15 degrees above the horizontal. Apply the forces at the onset rate of not more than 30,000 pounds per second. Attain the 3,000 pound forces in not more than 30 seconds and maintain it for 10 seconds. At the manufacturer's option, the pelvic body block described in Figure 2B may be substituted for the pelvic body block described in Figure 2A to apply the specified force to the center set(s) of anchorages for any group of three or more sets of anchorages that are simultaneously loaded in accordance with S4.2.4 of this standard.

Issued on June 12, 1990.

Jeffrey R. Miller,

Deputy Administrator.

[FR Doc. 90-13951 Filed 6-14-90; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB31

Endangered and Threatened Wildlife and Plants; Threatened Status Determined for *Spiraea virginiana* (Virginia Spiraea)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Spiraea virginiana* (Virginia spiraea) to be a threatened species and thereby provides the species needed protection under the authority contained in the Endangered Species Act of 1973, as amended. Twenty-four populations are recorded from West Virginia south to Georgia. Although the species is widespread geographically, it is restricted to a narrow ecological niche and occurs in small to moderate populations at most locations. Growing along scoured banks of high gradient streams or braided features of lower reaches, *Spiraea virginiana* is presently known from 24 stream systems in 6 States. An additional six historic records are presumed to be extirpated. A combination of factors contributes to the rarity of the species, including a very narrowly defined habitat niche that is subject to scouring and flooding, an apparent lack of successful sexual reproduction, limited opportunities for colonization, and competition from other species. Threats to the species include human disturbance at several site locations and two proposed hydroelectric facilities. Unsuccessful seed germination tests and the lack of seedlings at any location suggest that only one genotype is present at each location. Critical habitat has not been determined.

EFFECTIVE DATE: July 18, 1990.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Regional Office, One Gateway Center, Newton Corner, Massachusetts 02158.

FOR FURTHER INFORMATION CONTACT: Sharon W. Morgan, Fish and Wildlife Biologist (see ADDRESSES section) (617-965-5100 ext. 382 or FTS 829-9382).

SUPPLEMENTARY INFORMATION:

Background

Spiraea virginiana Britt. was described from a specimen collected by

C.F. Millsbaugh on June 20, 1890, along the Monongahela River in Monongalia County, West Virginia (Clarkson 1959, Glencoe 1961). The original description also noted an 1878 collection from the mountains of North Carolina made by G.R. Vasey (Britton 1890).

Later studies of the Virginia spiraea described in variations in leaf size, shape and degree of serration, resulting in the publication of variety *serrulata* (Rehder 1920), which was later reduced to form *serrulata* (Rehder 1949).

Clarkson (1959) referred some specimens to *S. corymbosa* Raf. (= *S. betulifolia* Pallas) although Glencoe (1961) included these specimens in his concept of *S. virginiana*, noting that the species was extremely variable. After visiting many populations throughout the range of the species, Ogle has concluded that *S. virginiana* is a distinct species and is easily distinguished from *S. corymbosa* on the basis of plant height, branching patterns, inflorescence size, and leaf morphology (D. Ogle, Virginia Highlands Community College, pers. comm. 1988). More important differences are the distinct habitat preferences of the two species and the non-overlapping geographic (allopatric) ranges (Ogle, pers. comm. 1988).

Virginia spiraea is a shrub in the rose family that grows from two to ten feet tall, with arching and upright stems. The species is a prolific sprouter and forms dense clumps that spread in rock crevices and around boulders. Leaves are alternate and quite variable in size, shape and degree of serration. Cream-colored flowers occur in branched, flat-topped inflorescences approximately four to eight inches wide. Plants flower during June and July.

S. virginiana is found in a narrowly defined habitat. It occurs along scoured banks of high gradient streams, or on meander scrolls, point bars, natural levees, or braided features of lower reaches. Scour must be sufficient to prevent canopy closure, but not extreme enough to completely remove small, woody species. Plants are most vigorous in full sun, but can tolerate some shading until released from competition (primarily from trees, large shrubs or vines). They occur within the maximum floodplain, usually at the water's edge with a variety of other disturbance-prone species (Ogle, pers. comm. 1988).

Presently, *S. virginiana* is known from 24 locations on 23 stream systems in 6 States. Six additional sites have not been relocated and are presumed to be extirpated. In Georgia, populations occur on Rock Creek in Walker County and Bear Creek in Dade County. The North Carolina sites are found on the South Fork of the New River in Ashe

County, the Little Tennessee River in Macon County, the Nolichucky River in Mitchell and Yancey Counties (extending downstream into Unicoi County, Tennessee), the South Toe River in Yancey County, and the Cane River in Yancey County. The species is known from additional sites in Tennessee along Abrams Creek and the Little River in Blount County, Cane Creek in Van Buren County, White Oak Creek in Scott County, Clifty Creek in Roane County, Daddy's Creek in Cumberland County, and Clear Fork in Morgan and Scott Counties. The Virginia populations are found on the Russell Fork and Pound Rivers in Dickenson County, the New River in Grayson County, and the Guest River in Wise County. West Virginia records occur on the Bluestone River in Mercer County, the Buckhannon River in Upshur County, in a shrub-dominated wet meadow in Raleigh County, and along the Gauley and Meadow Rivers in Nicholas and Fayette Counties. Populations in Kentucky occur along the Rockcastle River in Pulaski County and Sinking Creek in Laurel County.

Historic collections are known from North Carolina (Graham and Buncombe Counties), Tennessee (Blount County), West Virginia (Fayette and Monongalia Counties) and Pennsylvania (Fayette County).

Since the species is found sporadically scattered along streams and rivers, it is difficult to delineate the exact boundaries of discrete populations. All of the populations listed above occur within a five to six mile section of river; however, most populations are not scattered and only occur along a half mile or less of streambank.

Population estimates are based on the number of clumps recorded during field visits. Of the 24 known sites, 13 are small populations (less than 10 clumps), 8 are moderate in size (from 10 to 50 clumps) and only 3 are abundant (greater than 50 clumps).

Populations occur in a variety of Federal and State ownerships. Many are also found on private property, and since populations occur along rivers, several sites involve more than one landowner. Federal ownership includes the Jefferson National Forest (Virginia), the Cherokee National Forest (Tennessee), the Daniel Boone National Forest (Kentucky), Great Smoky Mountains National Park (Tennessee), Big South Fork National River and Recreation Area (Tennessee—Corps of Engineers and National Park Service) and John Flannagan Dam (Virginia—Corps of Engineers). Populations are found in four State parks in Georgia, Tennessee, Virginia and West Virginia.

Presently, three sites are voluntarily protected by private landowners contacted by The Nature Conservancy or State heritage programs. One historically known site has been eliminated by dam construction (population on the Monongahela River in West Virginia). Other historically known populations have not been relocated and are assumed extirpated (six sites in North Carolina, Tennessee, West Virginia and Pennsylvania).

The Virginia spiraea is a rare species due to a combination of factors, and biological circumstances as well as documented and potential human disturbance threaten many populations. The species occurs in a constantly fluctuating environment and requires disturbance for successful colonization, establishment and maintenance; however, too much scouring and/or flooding could eliminate populations entirely (Ogle, pers. comm. 1988). Field observations have documented a lack of or a significant reduction in seed production (many populations show aborted seeds), and germination tests have produced low germination rates. These observations suggest that only one genotype (genetic characteristics) may be present at each location. Opportunities for colonization of new sites are probably very limited and dependent upon a unique combination of biological and environmental conditions (Ogle, pers. comm. 1988). Competition by both native and introduced species adversely affects populations. Additionally, many populations are threatened by a range of human activities. A proposed hydroelectric facility at Summersville Dam on the Gauley River in West Virginia is located immediately upstream from one of the largest known populations, and long range plans include a hydroelectric generating facility at John Flannagan Dam on the Pound River in Virginia, above another population.

In 1986, the Service contracted with The Nature Conservancy's Eastern Regional Office to conduct status survey work on *Spiraea virginiana* and other Federal candidate plant species. Historic sites were searched in Pennsylvania, Tennessee and West Virginia. Suitable habitat was searched in Maryland (E. Thompson, Maryland Natural Heritage Program, pers. comm. 1988), West Virginia (Bartgis 1987) and Virginia (Ogle 1987). After completing fieldwork in Virginia, Ogle relocated historic sites in Georgia, Tennessee and North Carolina, searched approximately 75 to 100 miles of riverbank resulting in the discovery of about 20 new clones,

and recorded detailed information at all of the 24 known sites (Ogle, pers. comm. 1990). Most field workers reported that much suitable habitat exists; however, they indicated that the potential for finding new locations is low due to the rough and remote terrain that needs to be searched, and the sporadic occurrence of the species. It is anticipated that some additional populations will be found, but apparent lack of sexual reproduction, small sizes of known populations, and a variety of threats suggest that few additional sites will be located.

The U.S. Fish and Wildlife Service (Service) recognized *Spiraea virginiana* as a Category 2 candidate for listing in the Supplement to Review of Plant Taxa for Listing as Endangered or Threatened Species published in the Federal Register on November 28, 1983 (48 FR 53641). Category 2 comprises those taxa for which listing is possibly appropriate but for which existing information is insufficient to support a proposed rule. The updated notice of review for plant taxa published on September 27, 1988, again included *Spiraea virginiana* in Category 2. The proposal to list *S. virginiana* as a threatened species was published in the Federal Register of July 21, 1989. In a December 22, 1989 Federal Register notice, the public comment period was reopened to allow for the publication of required newspaper notices.

After evaluating the results of recent status survey work and comments received on the proposed rule, the Service has determined that listing *Spiraea virginiana* as a threatened species is appropriate. This decision was supported by The Nature Conservancy, Heritage Program personnel and other botanists (Bartgis 1987; Ogle, pers. comm. 1988; T. Rawinski, The Nature Conservancy, pers. comm. 1988; A. Weakley, North Carolina Heritage Program, pers. comm. 1988).

Summary of Comments and Recommendations

In the July 21, 1989 proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Subsequently, the period for public comment was reopened on December 22, 1989, to allow for the publication of required newspaper notices. Newspaper notices inviting general public comment were

published in the Morgantown, West Virginia, News Herald, the Cookeville, Tennessee, Herald-Citizen, the Beckley, West Virginia, Register/Herald, the Bristol, Tennessee-Virginia, Herald Courier and the Johnson City, Tennessee, Press, from December 20-24, 1989 inclusive. Twenty-two comments were received, including letters from five Federal agencies, eleven State agencies, three conservation organizations and three farm bureau federations. Fifteen letters supported listing (two specifically supported the decision not to list critical habitat), three acknowledged receipt of the proposal, one provided additional information and comments from the final three letters are discussed below.

Letters received from the West Virginia Farm Bureau and the North Carolina and Georgia Farm Bureau Federations contained a number of specific comments on the proposal; these are listed below with the Service's response to each.

Comment 1. The Service should designate critical habitat for this species in order to prevent restrictions on the use of pesticides over a larger area than that needed to protect the plants.

Service response: Environmental Protection Agency (EPA) pesticide registrations, including formulations and use patterns, are reviewed by the Service as part of the formal consultation requirements imposed on Federal agencies by section 7 of the Act. If, as part of that process, the Service determines that a particular use or formulation of a pesticide is likely to jeopardize the continued existence of a threatened or endangered species or adversely modify its critical habitat, then the Service must work with the EPA to devise reasonable and prudent alternatives to preclude jeopardy or adverse modification of the critical habitat. In past consultations with the EPA on the registration of pesticides, reasonable and prudent alternatives have generally involved prohibitions or restrictions on use patterns, formulation, method or time of year of application at the sites of known populations of listed species.

"Critical habitat" is defined by section 3 of the Act as the areas "on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection." However, it does not necessarily follow that restrictions on pesticide use would be limited to the designated critical habitat, since activities that adversely modify critical habitat are prohibited by section 7, even

if they actually take place outside the critical habitat. With or without designated critical habitat, reasonable and prudent alternatives are devised to assure that the areas where a given pesticide is restricted are only large enough to protect listed species.

Finally, the Service notes that there is no available information suggesting that pesticide contamination poses a threat to *S. virginiana*. While it is possible that adverse effects from pesticides may become a future consideration in protection of this species (due to development of new pesticides, changes in pesticide use patterns, or new information about sensitivity of the species to current pesticide uses), the Service does not currently know of any significant conflicts between pesticide use and protection of this species.

Comment 2. Available data may not be sufficient to support listing of *Virginia spiraea*.

Service response: The proposed rule for *S. virginiana* acknowledged that additional populations may be discovered, and since its publication six additional populations have been reported to the Service. Three were historic records that were subsequently relocated, one was a known site that had not been reported to the Service, and the two remaining locations were new discoveries. However, five of these additional populations are quite small (less than four clumps each) and the sixth population is vulnerable to elimination during flooding. As detailed in the Summary of Factors below, the Service continues to conclude that listing of *S. virginiana* as a threatened species is appropriate.

Comment 3. Location on State and Federal properties and protection agreements for some populations on private land already assure sufficient protection for this species.

Service response: As stated elsewhere in this rule, limited production of viable seeds, low establishment rates for new populations, competition from other woody species, human disturbance at most populations, and other factors also threaten this species.

Comment 4. Protection of this species "may bring unwarranted restraints that may conflict with agricultural practices . . ."

Service response: It is not clear what agricultural practices are referenced above. However, potential conflicts with pesticide registration and application are discussed in the Service's response to Comment 1, above.

Comment 5. Cost benefit ratios should be considered when evaluating the proposed hydroelectric facilities at

Summersville Dam in West Virginia and John Flannagan Dam in Virginia.

Service response: Section 4 of the Act and regulations set forth to interpret and implement this section require that listing determinations be made solely on the basis of the best available information regarding a species' status, without reference to economic or other impacts of such a determination. Further, the information presently available about these potential hydroelectric facilities is not sufficient to determine the impacts on Virginia spiraea; these impacts will be assessed during the section 7 consultation process if the agency responsible for the projects determines that their implementation could affect this threatened species.

Comment 6: One letter strongly opposes acquisition of land to protect Virginia spiraea by any State or Federal agency.

Service response: Following the publication of the final rule, the Service is responsible for developing a recovery plan for this species. This recovery plan, which will describe the various tasks that must be accomplished to stabilize and eventually delist this species, will be made available for comment by government agencies and other interested organizations and individuals. The Service has not yet determined whether land acquisition will be needed in order to recover this species.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Spiraea virginiana* should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 et seq.) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Spiraea virginiana* Britt. (Virginia spiraea) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Human disturbance at Virginia spiraea locations has been observed throughout the range of the species. Obvious signs of disturbance include debris sliding down a railroad embankment, mowing and clearing at the edge of a farm field, cutting for right-of-way maintenance, cutting for an

access path to the river, habitat disturbance by rafters, a culvert draining directly onto plants and debris settling on plants from cutting of trees up slope. Recreational use of rivers is rising, and disturbance to *S. virginiana* populations is expected to continue or increase. However, appropriate disturbance (to eliminate competition from other species) is necessary to maintain open habitat for *S. virginiana* populations.

One population in Monongalia County, West Virginia has been eliminated through construction of a dam (Bartgis 1987). Populations have not been relocated and are believed to be extirpated from the only known site in Pennsylvania, two sites each in North Carolina and West Virginia, and one location in Tennessee.

Suitable habitat has been eliminated throughout the range of the species by reservoir construction. Even if populations are not directly flooded, they may face the potential indirect threats of upstream and downstream water stabilization, which would eliminate or reduce scouring action necessary to maintain open habitat for the species.

Natural threats to the species including large scouring floods and competition from other woody species. Although *S. virginiana* is adapted to a fluctuating riverine environment, large storm events (100-year or larger floods) would probably eliminate most populations. Competition from native species such as *Physocarpus opulenta*, *Cornus amomum*, *Alnus serrulata*, *Platanus occidentalis*, *Rhus radicans*, *Salix* sp., *Hex* sp., and *Vitis* sp. has been observed at most locations in varying degrees, in addition to competition from introduced species like *Pueraria lobata*, *Polygonum cuspidatum*, *Lonicera japonica*, *Miscanthus sinensis*, *Arthraxon hispidus*, *Phalaris arundinacea* and *Rosa multiflora* (Ogle, pers. comm. 1988).

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Spiraea virginiana is not currently a significant component of the commercial trade in native plants; however, the species has good potential for horticultural use, and publicity surrounding the listing of the species could generate an increased demand.

C. Disease or Predation

Aphid damage on shoot tips has been observed at several populations in addition to leaf removal and laceration by caterpillars (Ogle, pers. comm. 1988). It is not known if this predation affects

the competitive ability of *Spiraea virginiana*.

D. Inadequacy of Existing Regulatory Mechanisms

After the listing proposal was published, North Carolina and Virginia added *S. virginiana* to their official State lists. The species is listed as extirpated in Pennsylvania and endangered in Tennessee, North Carolina and Virginia. West Virginia does not maintain an official list of rare plants, although the State Heritage Program includes this plant on its list of sensitive species. The Kentucky State Nature Preserves Commission is currently working to add *S. virginiana* to their list of species of concern, but this list does not have any official State designation. Once the species is Federally listed, *S. virginiana* will automatically be State-listed under the provisions of the Georgia Wildflower Preservation Act. These different State designations offer the species varying levels of protection.

The Georgia Wildflower Preservation Act of 1973 prohibits digging, removal, or sale of State-listed plants from public lands without the approval of the Georgia Department of Natural Resources. One population in Georgia is on State park land and will be provided stronger protection once official State-listing occurs. However, the second population is on private land and is only protected voluntarily through an informal agreement (Patrick, Georgia Natural Heritage Inventory, pers. comm. 1988).

North Carolina General Statute 19-B, 202.12-202.19, provides State-listed plants protection from interstate trade without a permit, and provides for monitoring and management of listed populations. Most populations in North Carolina occur on private land.

The Virginia Endangered Plant and Insect Species Act provides protection for taking without permits; however, private landowners are exempt from this provision. The Act also gives the Department of Agriculture and Consumer Services authority to regulate the sale and movement of listed plants and to establish programs for the management of listed plants.

S. virginiana is listed as an endangered species on Tennessee's list of endangered, threatened, and rare plant species. The Tennessee Rare Plant Protection and Conservation Act prohibits taking without permission of the landowner and requires that any commercial activity in the species be authorized by permit. Populations in Tennessee occur on Federal, State and

private lands and have some protection under current State regulations.

Pennsylvania presently lists the species as extirpated under the regulations of the Wild Resources Conservation Act (25 Pa. Code, chapter 82). Wild plant management permits are required by anyone who wishes to collect, remove, or transplant wild plants classified as endangered or threatened. Landowners are exempt from these requirements. Pennsylvania regulations also provide for the establishment of native wild plant sanctuaries on private lands where there is a management agreement between the landowner and the Department of Environmental Resources. It is anticipated that if *S. virginiana* were rediscovered in Pennsylvania, a change in the official State status would afford some protection for the species.

Existing regulatory mechanisms do not provide protection from human disturbance, habitat loss or biological limitations, which are presently the major threats to the species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Biological factors apparently threaten the continued existence of *S. virginiana*. Although the species flowers profusely and is visited by a variety of common insects, mature seeds have been observed at only a few populations (Ogle, pers. comm. 1988). While plants spread clonally, most plants observed are generally very old with well-established root systems. Field biologists have not reported the presence of seedlings at any population. Ogle attempted to germinate seeds collected from two North Carolina populations and reported successful germination from seeds collected at only one site. Nicholson collected seeds from a Virginia population but only five seeds germinated out of hundreds (perhaps thousands) of seeds collected, an unusual occurrence for *Spiraea* species (R. Nicholson, Arnold Arboretum Greenhouse, pers. comm. 1988). Germination tests indicate that a mineral soil may be required for successful germination; then, successful growth and establishment of young plants may require humus to be added through seasonal deposition without flooding or swiftly flowing waters (e.g., slowly receding after high flows) (Ogle, pers. comm. 1988).

It is expected that new populations could originate from clumps breaking off and becoming established downstream during flood events. However, severe floods could potentially eliminate original populations and the dispersed clumps would have to lodge in a

location where conditions favorable to establishment and survival existed (open canopy, lack of competition, available moisture without flooding or fast flows, and sufficient soil for plants to take root).

While few details of the life history are known, observations made during field visits suggest that each population may represent only one genotype (for a total of 24 different genotypes), and that opportunities for colonization and establishment of new sites are very limited (Ogle, pers. comm. 1988). Most populations appear to be very old and face a variety of threats throughout the range of the species. Heavy competition from other species occurs at most populations.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Spiraea virginiana* as a threatened species. Although known from 24 sites in 6 states, human disturbance, a constantly fluctuating environment, and competition from other species pose problems to the continued existence of many populations. Additionally, biological factors apparently limit opportunities for establishment and colonization of new sites. Field observations suggest that only 24 different genotypes exist, and 88 percent of the known populations are small to moderate in size. However, populations are reproducing clonally, and it is possible that a few additional populations will be discovered. These factors support listing as a threatened species. Critical habitat is not being designated for reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Act requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Spiraea virginiana* at this time. Most populations of this species are limited to moderate in size and loss of plants to vandalism, or increased collection for scientific or horticultural use could potentially eliminate smaller populations. Collecting, without permits, will be prohibited at the locations under Federal management; however, taking restrictions will be difficult to enforce at these sites and will not be applicable to sites on private land. Therefore, publication of critical habitat

descriptions and maps would increase the vulnerability of the species without significantly increasing protection. The owners of all populations on Federal and State lands have been informed of the importance of protecting the species and its habitat. Landowners of major populations on private land have also been contacted by the Service, and State heritage program personnel have contacted two other landowners. Protection of this species' habitat will be addressed throughout the recovery process and through the section 7 jeopardy standard. No additional benefits would result from a determination of critical habitat. For these reasons, it would not be prudent to determine critical habitat for *Spiraea virginiana* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State and private agencies, groups and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species.

The Nature Conservancy and State natural resource agencies have already secured voluntary protection of three sites. As a result of the Service funded status survey work and the subsequent proposal to list the species, three States have added *Spiraea virginiana* to their official State lists.

Six populations occur totally or partially on Federal lands (U.S. Forest Service, National Park Service and Army Corps of Engineers). An additional four sites occur partially or completely on State park lands in Georgia, Tennessee, Virginia and West Virginia. The appropriate managing agencies have been contacted, and it is anticipated that they will implement appropriate management plans.

Listing should encourage research on critical aspects of population biology. Information is needed regarding the number of different genotypes, the lack of successful seed production, and disturbance regimes required for population establishment and maintenance. These factors will be important in long-term management considerations for individual populations.

The protection required of Federal agencies and the prohibitions against certain activities for listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Two populations occur downstream of dams at Army Corps of Engineers Reservoirs (John Flannagan Dam, Dickenson County, Virginia and Summersville Lake, Nicholas County, West Virginia). A hydroelectric project that requires a license from the Federal Energy Regulatory Commission (FERC) is currently proposed for Summersville Dam and long range plans include a similar project at John Flannagan Dam. Three populations in West Virginia occur in areas recently designated a National Recreation Area or a National Scenic River. These three populations occur on the Gauley, Meadow and Bluestone Rivers. Although these populations presently occur on private land, it is anticipated that the National Park Service will eventually acquire these lands. All of these projects will require consultation with the Service.

Other federally funded or permitted actions that could affect this plant include, but are not limited to, Soil Conservation Service watershed management activities, FERC-permitted hydroelectric projects, road construction projects involving Federal Highway Administration funds, railroad abandonment proposals under the jurisdiction of the Interstate Commerce Commission, or projects under the jurisdiction of the Army Corps of Engineers.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. With respect to *Spiraea virginiana*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. In addition, for listed plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation or the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, VA 22203 (703/358-2093).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination

was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

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Author

The primary author of this rule is Sharon W. Morgan (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture)

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500(1986), unless otherwise noted.

2. Amend § 17.12(h) for plants by adding the following, in alphabetical order under the family Rosaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Rosaceae—Rose family:						
<i>Spiraea virginiana</i>	Virginia spiraea	U.S.A. (GA, KY, NC, PA, TN, VA, T WV).		389	NA	NA

Dated: May 10, 1990.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 90-13877 Filed 6-14-90; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 900511-0111]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of reopening of a fishery.

SUMMARY: NOAA announces the reopening of the ocean commercial salmon fishery in the exclusive economic zone (EEZ) from the U.S.-Canada border to Cape Falcon, Oregon, for four days on June 8 through June 11, 1990. This fishery was closed at midnight, June 2, 1990, based on projections that the 26,100 chinook salmon quota for the May 1 through June 15, 1990 fishing period had been reached. Evaluation of landing data following closure of the fishery indicates that sufficient chinook salmon remain to allow four additional days of fishing. This action is intended to maximize the harvest of chinook salmon in this subarea without exceeding the ocean share of salmon allocated to the commercial fishery.

DATES: Effective: Reopening of the EEZ to commercial salmon fishing between the U.S.-Canada border and Cape Falcon, Oregon, is effective 0001 hours local time June 8, 1990, through 2400 hours local time June 11, 1990. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.21, and 661.23 (as amended May 1, 1989). *Comments:* Public comments are invited until July 2, 1990.

ADDRESSES: Comments may be mailed to Rolland A. Schmitt, Director,

Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-00870. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director (Regional Director).

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-8140.

SUPPLEMENTARY INFORMATION:

Regulations governing the ocean salmon fisheries at 50 CFR part 661 specify at § 661.21(a)(2) that

If a fishery is closed under a quota before the end of a scheduled season based on overestimate of actual catch, the Secretary will reopen that fishery in as timely a manner as possible for all or part of the remaining original season provided the Secretary finds that a reopening of the fishery is consistent with the management objectives for the affected species and the additional open period is no less than 24 hours.

In its preseason notice of 1990 management measures (55 FR 18694, May 7, 1990), NOAA announced that the 1990 commercial fishery for all salmon except coho in the subarea from the U.S.-Canada border to Cape Falcon, Oregon, would begin on May 1 and continue through the earlier of June 15 or the attainment of a quota of 26,100 chinook salmon. This fishery has been open May 1 through May 14, May 18 through May 27, and May 31 through June 2. Each closure was based on projections that the quota would be reached by that date. However, subsequent evaluation of landing data indicated that the closures were based on overestimates of the catch, and the quota had not been reached.

According to the best available information, commercial catches through June 2 totaled 23,400 chinook salmon, leaving 2,700 chinook salmon available for harvest in the subarea chinook quota. This amount of available chinook salmon has been determined to be sufficient for four additional days of fishing, on June 8 through June 11. This action is being taken in as timely a manner as possible to allow commercial salmon fishermen full opportunity to catch the chinook salmon quota prior to the scheduled end of the fishing season on June 15, 1990. The Regional Director

has determined that the reopening of the commercial fishery in this subarea is consistent with the management objectives for chinook salmon in this subarea. As in the original season (May 1 through June 15), Conservation Zone 1, the Columbia River mouth, is closed (55 FR 18894, May 7, 1990).

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen was given prior to 0001 hours local time, June 8, 1990, by telephone hotline number (206) 526-6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz. NOAA issues this notice of the reopening of the commercial salmon fishery in the EEZ from the U.S.-Canada border to Cape Falcon, Oregon, which is effective 0001 hours local time, June 8, 1990 through 2400 hours local time, June 11, 1990. This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding this reopening. The States of Washington and Oregon will manage the commercial fishery in state waters adjacent to this area of the EEZ in accordance with this federal action.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after filing with the Office of the Federal Register, through July 2, 1990.

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 12, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management.

[FR Doc. 90-13958 Filed 6-12-90; 4:18 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 55, No. 116

Friday, June 15, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA-88-126]

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; Proposed Amendments to the United States Standards for Dry Whey and the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes changes in the United States Standards for Dry Whey. The proposed amendment would allow the moisture removed from cheese curd as a result of salting ("salty whey") to be collected for further processing as whey if the collection of the moisture and the removal of the salt from the moisture are conducted in an approved manner. The proposal takes into consideration new technology for removing salt from salty whey. A corollary change is made in the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service.

DATES: Comments must be submitted on or before August 14, 1990.

ADDRESSES: Comments should be sent to: Director, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Duane R. Spomer, Head, Dairy Standardization Section, U.S. Department of Agriculture, Agricultural Marketing Service, Dairy Division, room 2750, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-3171.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed by USDA in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule under the criteria contained therein.

The proposed rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The Administrator, Agricultural Marketing Service, has determined that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities because use of the standards is voluntary and the revisions would not increase costs to those utilizing the standards.

In accordance with the United States Department of Agriculture policy for regulatory review, the Dairy Standardization Section conducted a review of the United States Standards for Dry Whey. The objective of the review was to obtain both current and historical information relating to a proposal to allow the moisture removed from cheese curd as a result of salting (salty whey) to be collected for further processing as whey if the salty whey has been collected and the salt has been removed in an approved and sanitary manner. The review took into consideration new technology for removing salt from salty whey.

The review involved the collection and evaluation of information from the Department's Dairy Grading Section and representatives of the whey processing industry. It was determined that modern equipment and processes can collect the salty whey and remove the salt from it in a sanitary manner. In the past, salty whey has been discarded. The U.S. Standards for Dry Whey should, therefore, be amended to allow the collection of salty whey and, after the salt has been removed, the further processing of the remaining material as whey.

USDA grade standards are voluntary standards that are developed pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) to facilitate the marketing process. Manufacturers of dairy products are free to choose whether or not to use these grade standards. USDA grade standards for dairy products have been developed to identify the degree of quality in the

various products. Quality in general refers to usefulness, desirability, and value of the product—its marketability as a commodity. When dry whey is officially graded, the USDA regulations and standards governing the grading of manufactured or processed dairy products are used. These regulations also require a charge for grading service provided by USDA.

A corollary change must be made in part 58, subpart B, entitled General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service to conform the definition of whey set forth therein with the amended U.S. Standards for Dry Whey.

All written submissions made pursuant to this notice will be made available for public inspection at the Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2750-S, Washington, DC, during regular business hours.

List of Subjects in 7 CFR Part 58

Dairy products, food grades and standards, food labeling, reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 58 be amended as follows:

PART 58—[AMENDED]

1. The authority citation for 7 CFR part 58 continues to read as follows:

Authority: Agricultural Marketing Act of 1946: Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended; 7 U.S.C. 1622, 1624.

2. In subpart B, § 58.805(a) is revised to read as follows:

§ 58.805 Meaning of words.

(a) *Whey*. "Whey" is the fluid obtained by separating the coagulum from milk, cream, and/or skim milk in cheesemaking. The acidity of the whey may be adjusted by the addition of safe and suitable pH adjusting ingredients. Moisture removed from cheese curd as a result of salting may be collected for further processing as whey if the collection of the moisture and the removal of the salt from the moisture are conducted in accordance with procedures approved by the Administrator.

3. In Subpart O, § 58.2601 is revised to read as follows:

§ 58.2601 Whey.

"Whey" is the fluid obtained by separating the coagulum from milk, cream, and/or skim milk in cheesemaking. The acidity of the whey may be adjusted by the addition of safe and suitable pH adjusting ingredients. Moisture removed from cheese curd as a result of salting may be collected for further processing as whey if the collection of the moisture and the removal of the salt from the moisture are conducted in accordance with procedures approved by the Administrator.

Signed at Washington, DC, on June 11, 1990.

Daniel Haley,

Administrator.

[FR Doc. 90-13912 Filed 6-14-90; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 944

[Docket No. FV-90-139PR]

Fruits; Import Regulations.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes changing the minimum grade and size requirements applied to oranges imported into the United States. The proposal would apply the requirements for domestic shipments of oranges under M.O. 905 (Florida Citrus) to imported oranges, beginning September 24, 1990, the anticipated start of Florida's next shipping season. Currently, the orange import requirements are the same as those applied to Texas oranges under M.O. 906 (Texas Citrus). This proposed action would require orange imports to meet somewhat higher minimum grade and size requirements. This action is necessary because imported oranges are expected to be in most direct competition with Florida oranges.

DATES: Comments must be received by July 16, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and

page number of this issue to the Federal Register.

FOR FURTHER INFORMATION CONTACT:

Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3918.

SUPPLEMENTARY INFORMATION: This proposed action is issued under section 8e (7 U.S.C. 608e-1) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674); hereinafter referred to as the Act. Section 8e of the Act provides that whenever specified commodities, including oranges, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities. Section 8e also provides that whenever two or more marketing orders regulate the same commodity produced in different areas of the United States, the Secretary shall determine which area the imported commodity is in most direct competition with and apply the regulations for that area to the imported commodity. During 1989, fresh oranges were imported into the United States primarily from the Dominican Republic, Mexico, Jamaica, Italy, Spain, and Israel.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 25 orange importers in the United States subject to regulation under the orange import regulation. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.2) as those whose annual receipts are less than

\$3,500,000. A majority of these importers may be classified as small entities.

Oranges imported into the United States are regulated under § 944.312 (7 CFR 944.312). This proposed action would amend § 944.312 to change grade and size requirements applied to oranges imported into the United States to the domestic requirements for Florida oranges under M.O. 905 (Florida Citrus). Currently, the orange import requirements are the same as those applied to Texas oranges under M.O. 906 (Texas Citrus).

A severe freeze in late December 1989 caused considerable damage to the Texas orange crop. It is anticipated that the Texas orange crop will be commercially insignificant for the next few years. However, fresh oranges are currently being shipped to market from Florida, even though that crop was also damaged by the freeze. At this time it appears that Florida will ship substantial quantities of fresh fruit to market next season.

The effect of this proposed action would be to require imported oranges to meet the Florida marketing order's somewhat higher minimum grade and size requirements, compared with the Texas marketing order based requirements. Under M.O. 906 (Texas Citrus) oranges must grade at least U.S. No. 2 and be at least 2 1/8 inches in diameter, while under the current grade and size regulation for Florida citrus § 905.306 (7 CFR 905.306), fresh domestic shipments of Early and Midseason oranges and other types commonly called "round oranges"; and Valencia, Lue Gim Gong, and similar late maturing oranges of the Valencia type will need to grade at least U.S. No. 1 and be at least 2 1/8 inches in diameter, while navel oranges will need to grade at least U.S. No. 1 Golden and be at least 2 1/8 inches in diameter. While the regulation for Florida citrus also includes Temple oranges, the proposed orange import requirements will not apply to this fruit, since it is not botanically classified as an orange.

A result of this proposed rule would also be to increase the quantity of oranges which persons may import exempt from import requirements to 15 standard packed 1/2-bushel cartons, in accordance with the quantity currently exempted under § 905.141 (7 CFR 905.141). The current exemption of 10 1/2 bushels is based on the quantity of fresh oranges exempted under M.O. 906. In addition, this proposed rule would change the section heading for clarity.

Based on the current orange marketing situation, it is proposed that imported oranges are now in most direct

competition with oranges regulated under M.O. 905, that the orange import requirements be based on the Florida marketing order orange requirements, and that the minimum grade and size requirements for imported oranges be the same as those in effect for Florida oranges under M.O. 905.

Miscellaneous changes are proposed for clarity including deletion of obsolete § 944.312(g).

This proposed action reflects the Department's appraisal of the need to change the orange import requirements, as hereinafter set forth, and is in accordance with the Act. Based on the above, the Administrator of the AMS has determined that this proposed action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR part 944 is proposed to be amended as follows:

PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 944 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 944.312 is revised to read as follows:

§ 944.312 Orange Import Grade and Size Regulation.

(a) Pursuant to section 8e of the Act and part 944—Fruits; Import Regulations, the importation into the United States of any oranges, except for Temple oranges, is prohibited unless such oranges meet the same minimum grade and size requirements as those specified for oranges grown in Florida shipped to domestic markets under M.O. 905 (7 CFR Part 905). The minimum grade and size requirements for domestic shipments of Florida-grown oranges are specified in Table 1 of paragraph (a) of 7 CFR 905.306. The minimum grades and sizes specified in 7 CFR 905.306 and applicable to imported oranges are defined in the United States Standards for Grades of Florida Oranges and Tangelos (7 CFR 51.1140-1179).

(b) The Secretary has determined that oranges imported into the United States are in most direct competition with Florida-grown oranges regulated under M.O. 905 and has found that the minimum grade and size requirements for imported oranges, except for Temple oranges, shall be the same as those

established for oranges under M.O. 905, effective September 24, 1990.

(c) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, quality, and maturity of oranges imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of oranges, is required on all imports. The inspection and certification services will be available upon application in accordance with the Regulations Governing Inspection, Certification and Standards of Fresh Fruits, Vegetables, and Other Products (7 CFR part 51).

(d) The term "importation" means release from custody of the United States Customs Service.

(e) Any person may import up to 15 standard packed cartons (12 bushels) of oranges exempt from the requirements specified in this section.

(f) Any oranges which fail to meet the import requirements prior to or after reconditioning may be exported or disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of such oranges borne by the importer.

Dated: June 8, 1990.

Robert C. Keeney,

Acting Director, Fruit and Vegetable Division.
[FR Doc. 90-13801 Filed 6-14-90; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-101-AD]

Airworthiness Directives; Aerospatiale Model ATR42-300 and ATR42-320 Series Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42-300 and ATR42-320 series airplanes, which currently requires a one-time inspection of the main landing gear (MLG) actuator

fitting bolt holes for correct alignment, and rework of the fitting surface and bolt replacement, if necessary. This condition, if not corrected, could result in the inability to retract the landing gear and failure to achieve an adequate climb gradient. This action would revise the applicability to add certain airplanes and to delete other airplanes that have been modified.

DATES: Comments must be received no later than August 6, 1990.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-101-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Huhn, Standardization Branch, ANM-113; telephone (206) 431-1950. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68996, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-101-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On November 6, 1989, the FAA issued AD 89-24-08, Amendment 39-6393 (54 FR 48079, November 21, 1989), to require a one-time inspection of the main landing gear (MLG) actuator fitting bolt holes, and rework of the fitting surface and bolt replacement, if necessary. That action was prompted by reports of incorrect perpendicularity between the bolt hole axis and the fitting surface. This condition, if not corrected, could lead to failure of the landing gear actuator attachment fitting bolts, which could result in the inability to retract the landing gear and failure to achieve an adequate climb gradient.

Since issuance of that AD, Aerospatiale has issued Revision 2 to Service Bulletin ATR42-53-0045, dated January 21, 1990. This revision adds additional Model ATR42-300 and ATR42-320 series airplanes to the applicability. In addition, this revision excludes from its applicability airplanes that have been modified in accordance with Aerospatiale Service Bulletin ATR42-32-0023, Revision 1, dated April 20, 1989; or ATR42-53-0045, Revision 1, dated April 21, 1989; or ATR42-53-0050 (Modification 2221), dated January 25, 1990. This revision does not change the procedures for inspection of the MLG actuator fitting bolt holes for perpendicularity, elongation, and alignment between the bolt hole axis and fitting surface, or necessary rework of the fitting surface and bolt replacement, which are described in Revision 1, dated April 21, 1989. The Director Générale de l'Aviation Civile, which is the airworthiness authority of France, has classified Revision 1 of this service bulletin as mandatory, and has issued Airworthiness Directive 89-067-020(B)R1 addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would supersede AD 89-24-08 with a new airworthiness directive that would revise the applicability to coincide with

the French AD. This AD would continue to require a one-time inspection of the MLG actuator fitting bolt holes for correct perpendicularity, elongation, and alignment between the bolt hole axis and the fitting surface, and rework of the fitting surface and bolt replacement, if necessary, in accordance with the service bulletin previously described.

It is estimated that 54 airplanes of U.S. registry would be affected by this AD, that it would take approximately 20 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$43,200.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6396 (54 FR 48079, November 21, 1989), AD 89-24-08,

with the following new airworthiness directive:

Aerospatiale: Applies to Model ATR42-300 and ATR42-320 series airplanes, Serial Number 003 through 164, which have not been modified in accordance with Aerospatiale Service Bulletin ATR42-32-0023, Revision 1, dated April 20, 1989; or ATR42-53-0045, Revision 1, April 21, 1989; or ATR42-53-0050 (Modification 2221), dated January 25, 1990; certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent failure of the main landing gear (MLG) actuator fitting bolts due to an incorrect perpendicularity between the bolt hole axis and the fitting surface, accomplish the following:

A. For airplanes Serial Numbers 003 through 155; within 90 days after December 21, 1989 (the effective date of AD 89-24-08, Amendment 39-6396), inspect the MLG actuator fitting bolt holes for correct perpendicularity, elongation, and alignment between the bolt hole axis and the fitting surface, in accordance with Aerospatiale Service Bulletin ATR42-53-0045, Revision 1, dated April 21, 1989, or Revision 2, dated January 21, 1990.

1. If no discrepancies are found, reassemble in accordance with the service bulletin.

2. If discrepancies are found, prior to further flight, rework the fitting surface and replace the bolts in accordance with the service bulletin.

B. For airplanes Serial Numbers 156 through 164; within 90 days after the effective date of this amendment, inspect the MLG actuator fitting bolt holes for correct perpendicularity, elongation, and alignment between the bolt hole axis and the fitting surface, in accordance with Aerospatiale Service Bulletin ATR42-53-0045, Revision 1, dated April 21, 1989, or Revision 2, dated January 21, 1990.

1. If no discrepancies are found, reassemble in accordance with the service bulletin.

2. If discrepancies are found, prior to further flight, rework the fitting surface and replace the bolts in accordance with the service bulletin.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Maintenance Inspector (PMI). The PMI will then forward comments or concurrence to the Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the

appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 318 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 8, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-13942 Filed 6-14-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-96-AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Model 757 series airplanes, which would require inspection and replacement, if necessary, of undersize wires installed in the number 1 window heat system; and reporting to the FAA of any undersize wires detected. This proposal is prompted by two reports of the installation of undersize wires in the flight compartment window heat system that resulted in overheating and discolorization of the wire and protective sleeving. This condition, if not corrected, could result in failure of the number 1 window heat system; damage to other equipment, and/or smoke and fire.

DATES: Comments must be received no later than August 7, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-96-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific

Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1575. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-96-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

During refurbishment of two Boeing Model 757 series airplanes, it was discovered that undersize wire AWG 22 instead of AWG 12 was installed in the flight compartment number 1 window heat system. The wires exhibited evidence of overheating.

The AWG 22 wire (Boeing type BMS 13-51) is polyimide insulated nickel plated copper with a temperature rating of 200 degrees Celsius (200 °C). AWG 22 wire rated at 200 °C should be limited to 6 amperes or less in a bundled configuration. While any circuit utilizing 200 °C AWG 22 wire in a bundled configuration should be protected by a 6 ampere circuit breaker, the Model 757 window heat wiring is connected to a 25

ampere circuit breaker and, therefore, is not adequately protected.

This condition, if not corrected, could result in failure of one or both (pilot and first officer) number 1 window heat systems. Depending on anticipated icing conditions, the operation of window heat system number 1 or number 2, or both systems, are required for dispatch. Overheating of the wire could cause damage to the wiring of other systems whose wire bundles are routed in close proximity to the subject wire bundle, and/or smoke and fire.

The FAA has reviewed and approved Boeing Service Bulletin 757-30-0015, Revision 1, dated January 25, 1990, which describes procedures for the inspections necessary to determine if undersize wire exists and procedures necessary for replacement of any such wires with wires of appropriate size.

Since this condition is likely to exist on other airplanes of this same type design, an AD is proposed which would require inspection for undersize wires installed in the window heat system, and replacement, if necessary, with appropriately sized wires, in accordance with the service bulletin previously described. Additionally, operators would be required to submit a report to the FAA of any undersize wire found.

There are approximately 204 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 123 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required inspection for undersize wires, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$9,840.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96-511) and have been assigned OMB Control Number 2120-0056.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive

Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 28, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes, as listed in Boeing Service Bulletin 757-30-0015, Revision 1, dated January 25, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect undersize wiring in the flight compartment number 1 window heat system, accomplish the following:

A. Within 90 days after the effective date of this AD, inspect for the presence of undersize wire in the number 1 window heat system, in accordance with Boeing Service Bulletin 757-30-0015, Revision 1, dated January 25, 1990.

1. If undersize wire is found, replace prior to further flight with wire of appropriate size, in accordance with Boeing Service Bulletin 757-30-0015, Revision 1, dated January 25, 1990.

2. For Group 1, 2, and 3 airplanes as listed in Boeing Service Bulletin 757-30-0015, Revision 1, dated January 25, 1990 accomplish the following additional procedures: If the inspection indicates that the replacement of wires number W2384-2001B-12 and W2384-2001R-12, which run between terminals 1 and 2 of terminal block TB5028 and pins number 1 and 2 of connector D41592P, is necessary, prior to further flight sleeve these wires using Varglass No. 3, color tan, in accordance with Boeing Standard Wiring Manual 20-10-18, and tie them using Nomex 1074M lacing tape. Refer to the Accomplishment Instructions and the wiring diagram and flagnote 5 of Figure 1, "Wire Installation - Left Window

Heat Group 1, 2 and 3 Airplanes," of Boeing Service Bulletin 757-30-0015, Revision 1, dated January 25, 1990.

B. Within 30 days after detecting any undersize wire, submit a report of findings, positive or negative, to the Manager, Manufacturing Inspection District Office, FAA, Transport Airplane Directorate, 7300 Perimeter Road South, Seattle, Washington 98108.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Avionics Inspector (PAI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 7, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-13937 Filed 6-14-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-102-AD]

Airworthiness Directives; British Aerospace Model MAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all British Aerospace Model BAC 1-11 200 and 400 series airplanes, which would require the installation of two pairs of temperature sensors in the auxiliary power unit (APU) air intake plenum. This proposal is prompted by a report of an internal in-flight fire in the APU which remained

undetected until after the airplane had landed. This condition, if not corrected, could result in an undetected in-flight fire in the APU.

DATES: Comments must be received no later than August 6, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-102-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, D.C. 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to

Docket Number 90-NM-102-AD." The postcard will be date-time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all British Aerospace Model BAC 1-11 200 and 400 series airplanes. There has been a report of an internal in-flight fire in the APU which remained undetected until after the aircraft had landed. The design of the APU currently installed on Model BAC 1-11 200 and 400 series airplanes, does not incorporate a heating sensing feature in the air intake plenum. This condition, if not corrected, could result in an undetected in-flight fire in the APU.

British Aerospace has issued Alert Service Bulletin 49-A-PM5955, Issue 1, dated April 13, 1988, which describes procedures for the installation of two pairs of temperature sensors in the auxiliary power unit (APU) air intake plenum, which will shut down the APU in the event of a fire. The United Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require the installations of two pairs of temperature sensors in the APU air intake plenum in accordance with the service bulletin previously described.

It is estimated that 70 airplanes of U.S. registry would be affected by this AD, that it would take approximately 24 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. The estimated cost for required parts is \$3,350. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$301,700.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism

implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows: Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding following new airworthiness directive:

British Aerospace: Applies to Model BAC 1-11 200 and 400 series airplanes, certificated in any category. Compliance is required within 30 days after the effective date of this AD, unless previously accomplished.

To provide auxiliary power unit (APU) air intake plenum overheat detection, accomplish the following:

A. Install temperature sensors in the APU air intake plenum, in accordance with British Aerospace Alert Service Bulletin 49-A-PM5955, Issue 1, dated April 13, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Maintenance Inspector (PMI). The PMI will then forward comments or concurrence to the Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, D.C. 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle Washington, on June 6, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-13943 Filed 6-14-90; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 3, 171

Commission Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration and Membership Responsibility Actions

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") proposes to adopt rules establishing standards and procedures for Commission review of decisions of registered futures associations such as the National Futures Association ("NFA"). The Commission proposal covers review of NFA decisions in four types of actions: Disciplinary actions, membership denial actions, registration actions and member responsibility actions. The proposed rules would establish a common procedure for seeking review and a stay of a final decision by NFA in disciplinary, membership denial and registration actions, and separate procedures for seeking review and a stay of NFA decisions in member responsibility actions. In proposing these rules, the Commission seeks to promulgate standards for review that will permit NFA to exercise its expertise and independent judgment in proceedings subject to these rules while providing a person aggrieved by the result of NFA's action an effective means to obtain relief from prejudicial errors. The

Commission also seeks to establish an appellate process that is comprehensive, balanced, efficient and consistent with principles of fundamental fairness.

DATES: Comments must be submitted on or before August 14, 1990.

ADDRESSES: Comments should be sent to: Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Attention: Secretariat.

FOR FURTHER INFORMATION CONTACT: Susan Nathan, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-9880.

SUPPLEMENTARY INFORMATION:

Public reporting burden for this collection of information is estimated to average 1.6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Joe F. Mink, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581; and to Office of Management and Budget, Paperwork Reduction Project 3038, Washington, DC 20503.

I. Statutory Background

Section 17 of the Commodity Exchange Act ("Act") authorizes the Commission to register as futures associations entities that meet certain minimum requirements. Pursuant to this authority, the Commission in 1981 granted registration as a futures association to NFA. Unlike self-regulatory organizations approved by the Commission pursuant to section 5 of the Act, NFA is not a voluntary membership organization; with a few narrow exceptions, persons who wish to conduct business in the futures industry must be members of NFA.¹

Congress has established specific criteria to guide NFA's promulgation and application of membership standards and disciplinary rules. Generally, NFA may not deny any applicant membership unless the applicant is subject to one of the specific exclusions established in the Act or to

an exclusion adopted by the NFA in a rule that has been approved by the Commission.² Further, as a condition of registration, the Act requires registered futures associations such as NFA to make and enforce disciplinary rules that are binding on all members,³ and to use a "fair and orderly procedure" in applying their membership standards and enforcing their disciplinary rules. In addition to this general standard of conduct, section 17(b)(9) of the Act specifies minimal procedural protections that must be afforded to those involved in any proceeding commenced by NFA to determine whether discipline should be imposed, membership denied, or association with a member barred. The Commission has amplified the protections set forth in the Act by promulgating regulations that require certain minimal procedural safeguards in NFA disciplinary and membership proceedings. See 17 CFR 170.6, 170.7.⁴

In addition to the authority granted to all futures associations registered under the Act, NFA has authority specifically delegated to it by the Commission. Pursuant to sections 8a(10) and 17(o) of the Act, the Commission has authorized NFA to perform most of the Commission's registration functions under the Act. In making registration decisions pursuant to these authorizations, NFA is subject to all provisions of the Act that would be applicable to the Commission if it were performing this function, and NFA has adopted procedures for its registration actions that are consistent with those adopted by the Commission in its part 3 rules.

¹ See generally sections 17(b)(2), (b)(3), and (b)(4) of the Act. The Commission has approved both the standards and rules applied by NFA in granting, conditioning, denying, revoking and restricting NFA membership. See, e.g., NFA Bylaws, Chapter 3; NFA Registration Rules, part 400.

² See generally section 17(b)(7), (b)(8).

³ The Commission approved NFA's basic membership and compliance rules at the time it granted its registration in 1981. *In re Application of the National Futures Association*, Order Granting Registration And Approving Rules (CFTC Sept. 22, 1981) (hereinafter cited as "Order Granting Registration"). At that time, the Commission noted that the standards and procedural protections available in NFA disciplinary, membership denial and registration actions should be equivalent to those provided by parts 8 and 9 of the Commission's regulations applicable to futures exchanges. Order Granting Registration at 68. The Commission has also indicated that both exchange disciplinary procedures and NFA disciplinary procedures should be conducted in a manner consistent with the requirements of fundamental fairness. Compare Preamble to the Adoption of the part 9 rules, (1977-1980 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 20,716 at 22,943 (CFTC Dec. 20, 1978) with 17 CFR 170.8.

II. Commission Oversight of NFA Decisions

When it approved NFA's registration as a futures association, the Commission emphasized its oversight responsibility with respect to, among other things, the fairness of NFA's disciplinary, membership and registration actions. Without adopting general procedural rules to govern its consideration of the issues raised in appeals from NFA disciplinary, membership denial and member responsibility decisions, the Commission developed procedures on a case by case basis and applied the standards then set out in section 17(i) of the Act.⁵ At the time it authorized NFA to perform registration functions the Commission already had developed an appellate procedure for review of decisions in registration cases. Accordingly, the Commission's oversight of NFA decisions in registration actions has closely paralleled its review of presiding officers' decisions under the Commission's part 3 rules. Subpart F of the part 3 rules was added in 1985 to implement the Commission's authority under section 17(o) of the Act to review NFA's registration decisions. (50 FR 39080, Sept. 30, 1985).

III. Commission Standards for Review

The Commission's review of NFA decisions is governed by section 17 of

⁴ In all the cases decided by the Commission, the applicable statutory standards were those described in section 17(i) prior to its amendment by the Futures Trading Act of 1986. Prior to its amendment, section 17(i)(1) stated as follows:

(i)(1) In a proceeding to review a disciplinary action taken by a registered futures association against a member thereof or a person associated with a member, if the Commission, after appropriate notice and opportunity for a hearing, upon consideration of the record before the association and such other evidence as it may deem relevant—

(A) Finds that such member or person has engaged in such acts or practices, or has omitted such act, as the association has found him to have engaged in or omitted, and

(B) Determines that such acts or practices, or omissions to act, are in violation of such rules of the association as have been designated in the determination of the association, the Commission shall by order dismiss the proceeding, unless it appears to the Commission that such action should be modified in accordance with paragraph (2) of this subsection. The Commission shall likewise determine whether the acts or practices prohibited, or the omission of any act required, by any such rule constitute conduct inconsistent with just and equitable principles of trade, and shall so declare. If it appears to the Commission that the evidence does not warrant the finding required in clause (A), or if the Commission determines that such acts or practices as are found to have been engaged in are not prohibited by the designated rule or rules of the association, or that such act as is found to have been omitted is not required by such designated rule or rules, the Commission shall by order set aside the action of the association.

⁵ Section 17(m) of the Act specifically authorizes the Commission to approve futures association rules that require all eligible persons to become members of the association. In approval NFA Bylaw 1101 at the time it granted registration, the Commission recognized that this provision amounted to an indirect requirement that all eligible persons become members of NFA.

the Act.⁶ Section 17 describes three specific standards of review: (1) Standards for Commission review of disciplinary actions; (2) standards for Commission review of membership denial actions; and (3) standards for Commission review of factual findings by NFA in registration actions.⁷ In

⁶ Pursuant to 17 CFR 3.87, the Commission will affirm NFA's registration decision unless it finds that:

- (1) The proceeding was not conducted in accordance with the rules of the National Futures Association;
- (2) The NFA did not observe fundamental fairness in the conduct of the proceeding;
- (3) The order issued by the National Futures Association was not in accordance with the policies of the Commission with respect to the statutory disqualification provisions of the Act; or
- (4) The weight of the evidence in the record does not support the finding that the applicant or registrant is subject to a statutory disqualification under section 8a(2), 8a(3) or 8a(4) of the Act.

⁷ Section 17(i)(1) of the Act focuses the Commission's review of NFA's substantive decision in a disciplinary action on whether (i) the respondent has engaged in the acts or practices, or has omitted the acts, that NFA found respondent to have engaged in or omitted; (ii) the acts or practices, or omissions to act, are in violation of the NFA rules specified in NFA's determination; and (iii) the NFA rules specified are, and were applied in a manner, consistent with the purposes of the Act. Section 17(i)(2) focuses the Commission's review of the sanctions imposed by NFA on whether, giving due regard to the public interest, the sanction imposed is excessive or oppressive.

The standards for Commission review of a decision by NFA in a membership denial action are described in section 17(i)(3). The Commission's review is focused on whether: (i) The specific grounds on which the denial or bar is based exist in fact; (ii) the denial or bar is in accordance with the NFA's rules; and (iii) the NFA rules applied are, and were applied in a manner, consistent with the purposes of the Act.

The standard for Commission review of a factual finding by NFA in a registration action is set out in section 17(o)(2). That standard is the same "weight of evidence" standard applied by courts under section 6(b) of the Act when they review Commission factual findings in adjudicatory decisions arising under the Act. Under the Commission's interpretation of this standard, it does not mechanically reweigh the evidence to ascertain in which direction it preponderates. The Commission focuses its inquiry on whether the fact finder acted reasonably in reaching material findings in light of the evidence (including the demeanor of the witnesses), the reasonable inferences drawn therefrom, and other pertinent circumstances.

There is no specific reference in section 17 to member responsibility actions and thus no explicit Congressional standards to guide the Commission's review of decisions by NFA in such actions. That the Commission at least tacitly approved of NFA's member responsibility actions is inherent in its registration of NFA as a registered futures association. See *Weinberg v. Commodity Futures Trading Commission*, (Current Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 24,397 (CFTC May 2, 1988). The Commission views member responsibility actions as a type of disciplinary action that is reviewed under the standards of section 17(i).

reviewing NFA's decisions in light of these statutory standards, the Commission has adopted a general review policy that it has described, in the registration context, as follows:

As a general matter, in reviewing NFA registration decisions, we consider whether the underlying proceeding has been conducted fairly and in accordance with NFA's rules; whether the weight of evidence supports NFA's findings concerning the existence of a statutory disqualification and circumstances relevant to a showing that registration is in the public interest; whether the decision demonstrates that appropriate standards have been considered and whether the decision demonstrates that there is a reasonable consistency among the facts found, the standards applied and the conclusion reached by the decisionmaker.

In re Horn, (1986-1987 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 23,731 at 33,888 (CFTC July 21, 1987). In a subsequent decision, the Commission indicated that the general approach to its review function outlined in *Horn* was also appropriate for its review of NFA membership actions. *Grabarnick v. National Futures Association*, (1986-1987 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 23,900 at 34,117 (CFTC July 21, 1987).

The Commission's review of NFA's decisions has focused primarily on the fairness of NFA's procedure and the reasonableness of NFA's findings of fact. The Commission generally has deferred to factual determinations made by NFA and, as a practical matter, NFA's factual determinations have been accepted by the Commission if they fall within a range of reasonableness. In other words, a factual determination is not disturbed on review if it is reasonable, even though the Commission would have reached a different determination if it had decided the matter in the first instance.⁸

⁸ The Commission's deferential policy with respect to its review of self regulatory organization fact finding differs from the Securities and Exchange Commission's ("SEC") policy of *de novo* review of the disciplinary decisions of self regulatory organizations under its jurisdiction. At the time the SEC first adopted its policy, the applicable language of section 19 of the Securities and Exchange Act of 1934, 15 U.S.C. 87s, provided that

"(T)he Commission shall conduct a hearing of its own and shall consider not only 'the record before the association' but also 'such other evidence as it may deem relevant.'"

Johnson & Co. v. Securities and Exchange Commission, 198 F.2d 690, 695 (2d Cir. 1952). Section 19 was amended in 1975 and the SEC review provisions recast in language identical to that of section 17(i) of the Act, which had been enacted in 1974. By this time, however, the *de novo* review interpretation was firmly established in both the SEC and the courts of appeals. See *Todd and Co. v. Securities and Exchange Commission*, 557 F.2d 1008, 1012 n.6 (3d Cir. 1977).

The Commission's experience has demonstrated that one of the chief assets that a self regulatory organization brings to the decisionmaking function is its expertise in evaluating factual issues in the context of day-to-day industry practice. Accordingly, the Commission has followed a policy of deference to the self regulatory organization's fact-finding. That expertise is devalued in a review system that prohibits or discourages deference to the self-regulatory organization's fact finding. The Commission is confident that NFA has the capability to establish and implement procedural safeguards that are sufficiently formal to assure that its decisions are reliable and consistent with fundamental fairness. In the Commission's view, a review system focused on the procedural fairness and reliability of the decisionmaking process, the reasonableness of NFA's factual findings and the consistency of its legal interpretations with the purposes of the Act is the approach that is most likely to be efficient, effective and consistent with the intent of Congress.⁹

IV. The Proposed Standards for Review

A. Appellate Standards For Final Decisions in Disciplinary, Membership Denial and Registration Actions

Consistent with its previously established approach to review, the Commission proposes to apply the standards set forth in Rule 171.34 in appeals from final decisions by NFA in disciplinary, membership denial and registration actions. While the standards for disciplinary actions differ slightly from those for membership denial or registration actions, all the standards reflect the approach to review outlined above. Each set of standards shares the

In any event, nothing in the text or legislative history of section 17(i) indicates that Congress intended to dictate the Commission's choice of either a deferential or a *de novo* standard in devising a review procedure for self regulatory organizations. In the Commission's view, a review role that gives appropriate deference to the fact finding of self-regulatory organizations encourages efficient decisionmaking while establishing adequate checks on the organization's decisional process. This also maintains consistency with the Commission's review policies, established pursuant to section 8c of the Act, with respect to its review of decisions by futures exchanges. See 17 CFR part 9.

⁹ Section 17(i) contemplates that the hearing conducted by the Commission on review may "consist solely of consideration of the record before the association and opportunity for the presentation of supporting reasons to affirm, modify or set aside the action of the association." By limiting the hearing before the Commission to consideration of the record before the self-regulatory organization, Congress recognized that proper oversight did not require that the Commission develop an independent factual record.

following characteristics: (1) NFA's procedural conduct in the proceeding is reviewed for consistency with both relevant NFA rules and applicable principles of fundamental fairness; (2) NFA's factual findings are evaluated for consistency with the "weight of the evidence" standard; and (3) NFA's conclusion is examined for consistency with the purposes of the Commodity Exchange Act.¹⁰

The differences in the standards correspond to distinctions in the description of the factors NFA is expected to apply in reaching its decision in each type of action. These distinctions are reflected in the Act, the Commission's regulations and in the rules promulgated by NFA. The specific formulation of each review standard should help parties to Commission appellate proceedings focus their arguments on the standards applied by NFA and the issues that are of primary concern to the Commission. For this reason, these standards should serve as a guide both to NFA in making its determinations and to the parties involved in an appeal from NFA's decision.

B. Standards Applicable to Requests for Relief Relating to the Effective Date of a Final Decision by NFA in a Disciplinary, Membership Denial and Registration Action

Under the proposed rules NFA must promptly mail a notice to all parties after it issues a final decision in a disciplinary, membership denial or registration action (Rule 171.21). NFA's decision (and any relief ordered therein) will be effective thirty days after NFA mails the required notice (Rule 171.22). An aggrieved party similarly has a thirty day period to mail to the Commission a notice of appeal from NFA's decision (Rule 171.23). Thus, as a general rule, there will be a thirty day delay between the mailing of the notice of NFA's decision and the date the decision goes into effect. During that period, an aggrieved individual may file a notice of appeal with the Commission. The filing of a notice of appeal will not stay the effective date of an NFA decision. Thus, as a general rule, NFA's decision will be effective while the Commission reviews the merits of the appeal and the parties will be bound by that decision until the Commission or court rules otherwise.

Rule 171.22(b) provides an avenue for NFA to seek an earlier effective date for its decision and provides a similar avenue for an aggrieved party to seek to stay the effective date of NFA's decision beyond the thirtieth day. In either case, the petition for relief must be mailed within ten days of the date NFA mails the notice of its decision. Any party opposing the request for relief may respond within five days of the date the petition for relief was mailed. If the Commission believes that it is necessary to the meaningful consideration of the petition, it need not await that response to act. If the Commission does not affirmatively act on the request prior to the decision's effective date under the general rule, the request will be deemed denied.

In reviewing either type of request for relief, the Commission proposes the standards set out in Rule 171.22(c). In general, these are the standards applied by the Commission in determining whether a stay pending judicial review is appropriate in a Commission enforcement case.¹¹ In interpreting these standards, the Commission employs the same mode of analysis used by courts in determining whether extraordinary injunctive relief is appropriate.¹² The burden is on the petitioning party to justify a departure from the general rule. The Commission has rarely granted such motions in the context of its other appellate programs, and while the specific outcome in any case will turn on the particular facts and circumstances, the Commission does not anticipate that such petitions will be successful with any great frequency in the context of decisions by NFA.

C. Review Standards Applicable to Final Decisions of NFA in Member Responsibility Actions

A member responsibility action is an extraordinary procedure that is commenced when NFA has reason to believe that summary and expeditious action against a member is necessary to protect the commodity futures markets, customers, or other NFA members. In making its Report to Congress regarding NFA in 1986, the Commission noted that

it generally regarded the member responsibility action as a "powerful and appropriate tool for self regulatory bodies such as NFA to obtain immediate compliance." A member responsibility action is a type of disciplinary action, and is thus subject to the standards set forth in section 17(b)(9), (i)(1) and (i)(2) of the Act and § 170.6 of the regulations. However, because of the distinct remedial focus of these actions, the Commission is proposing specific standards to guide its consideration of appeals from final decisions in member responsibility actions.

Under the Commission's proposal, final decisions of NFA in member responsibility actions will be reviewed under the standards of Rule 171.46. These standards are similar in many respects to those the Commission proposes to apply in the review of other disciplinary actions under Rule 171.34(a). The primary difference between the review standard for final decisions in member responsibility actions and those for final decisions in other disciplinary actions is in the focus of the factual element of the review standard. In the typical disciplinary action, the primary purpose of the proceeding is to evaluate past conduct in terms of NFA's rules so that violations of those rules may be sanctioned. The goal of a membership responsibility action, however, is to prevent future harm to the commodity futures markets, customers or members of NFA, rather than to sanction past wrongdoing.¹³ In view of this remedial focus and the strict limitation of these proceedings to situations where immediate intervention is imperative, the factual review should not be limited to appellant's alleged wrongful conduct but should include all factual matters relating to NFA's conclusion that resort to a summary procedure was necessary. The nature and extent of the threat to the commodity futures markets, customers and members of NFA, as well as the likelihood the threat will continue, diminish, or grow, are all factual issues that may affect NFA's reason for commencing a member responsibility action even if the factual record is not completely developed on the precise nature of appellant's violative conduct. In recognition of this important distinction, the Commission is proposing to adopt the standard set forth in Rule 171.46 for review of NFA's factual determinations in member responsibility actions.

¹³ Pursuant to NFA Rule 3-13, a member responsibility action does not preclude a disciplinary action based on the same facts.

¹⁰ The standards for membership and registration actions are to be read consistently with prior case law, e.g., *In re Horn and Grabarnick*, supra. See also *In re Walter*, (Current Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 24,215 (CFTC Apr. 14, 1988). See generally section 17(b)(7), (b)(8).

¹¹ See, e.g., *In re Sanchez*, (1982-1984 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 22,056 (CFTC March 23, 1984); *In re Gimbel*, (Current Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 24,241 (CFTC May 17, 1988). The factors considered include the likelihood of success on the merits, the evidence that denial of the motion will result in irreparable harm, the effect on the party opposing the grant of relief and the effect on the public interest.

¹² See, e.g., *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 842 (DC Cir. 1977); *Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F.2d 921 (DC Cir. 1958).

D. Standards Applicable to Requests for a Stay of the Effective Date of a Member Responsibility Action

In 1986, the Commission asked Congress to amend the automatic stay provision of section 17(h) of the Act in order to remove it as an impediment to NFA's effective use of member responsibility actions. In response, Congress enacted the current section 17(h)(3)(A) of the Act. Congress also enacted a requirement that the Commission establish standards for expedited procedures to be used in the consideration of a request for a stay. See section 17(h)(3)(B). Accordingly, the Commission is proposing two rules that will permit NFA members that are the subject of a member responsibility action to seek an immediate stay from the Commission when they are notified that the suspension, restriction or remedial action ordered in a member responsibility action has become or will be effective. The Standards to be applied under Rules 171.41 and 171.43 are consistent with recent court precedent and are similar to the standards set forth in Rule 171.22(c). Consistent with the approach generally reflected in these rules, the distinctions in the language of each proposed rule reflect the particular context in which the general standard is likely to be called into play.

Rule 171.41(d) applies to a request that the effective date of a member responsibility action brought by NFA be stayed while NFA conducts further proceedings under its rules. This rule will apply only in those cases in which NFA determines that the suspension, restriction or remedial action ordered in the member responsibility action will be effective prior to the time the member who is the subject of the action is accorded an opportunity for a hearing. In this situation, the likelihood of petitioner's success on the merits of his challenge to NFA's action generally turns on whether, under the circumstances, NFA's action was inconsistent with fundamental fairness—deprived the member of the right to notice and an opportunity to be heard at a meaningful time and in a meaningful manner. That determination, in turn, requires a balancing of factors. *Woods v. Federal Home Loan Bank Board*, 826 F.2d 1400, 1411 (5th Cir. 1987).¹⁴ Even if this balancing process

does not fall in favor of NFA's decision to take summary action, however, the petitioner will not be entitled to a stay pursuant to Rule 171.41(d) absent a showing that denial of the stay would result in irreparable harm.

Under Rule 171.41, is a petition for stay is denied, NFA shall continue its action in accordance with the applicable rules of the association. If a stay is granted by the Commission, the action will be remanded to NFA for further proceedings as provided in the Commission's Opinion and Order. Unless specifically ordered by the Commission, NFA shall remain free to make the suspension, restriction or remedial action ordered in the member responsibility action effective at the time a final decision in the action is issued (Rule 171.41(f)).

The Commission proposes to apply the standards of Rule 171.43(d) to petitions for a stay of the effective date of NFA's final decision in a member responsibility action. A decision will be considered final for purposes of this rule when the member has no right to additional procedure from NFA relating to the member responsibility action.¹⁵ The proposed standards are substantively equivalent to the standards applicable to final decisions in other disciplinary actions under Rule 171.22(c). Because NFA is authorized to make effective the suspension, restriction or remedial action ordered in the member responsibility action at the time it issues its decision, however, the Commission may not receive a petition for a stay under Rule 171.43 until after NFA's action is effective. In these circumstances, the rule provides that the Commission will not delay its decision on the petition to await receipt of NFA's response.¹⁶

Ct. 1740, 1747 (1987), 481 U.S. 252, 263. See also, *Morton v. Beyer*, 822 F.2d 384, 387-71 (3d Cir. 1987).

¹⁴ A member has no general right to appeal the decision in a member responsibility action within FIA, but NFA rules do permit an Appeals Committee to take review of a decision on its own motion within 15 days of the date of the decision. If the Appeals Committee chooses to take review of a matter, the Commission would likely stay its own proceedings on any appeal to the Commission pending completion of the Appeals Committee determination. If the suspension, restriction or remedial action ordered in the decision are effective during the Appeals Committee review, however, fundamental fairness requires that the Commission consider a petition for a stay of the effective date of the decision filed by an aggrieved party without regard to the possibility of *sua sponte* review by NFA's Appeals Committee.

¹⁵ In light of the importance of expedited action in such a situation, the Commission is proposing that NFA give the affected party and the Commission telephonic notice, in addition to written notice, when it makes its decision in a member responsibility action effective at the time of issuance. (Rule 171.42).

V. General Appellate Procedure

A Scope

The Commission proposes to accept appeals from almost all NFA decisions in disciplinary,¹⁷ membership denial, registration and member responsibility actions. Excluded from the scope of these rules are decision by NFA in disciplinary actions when the member seeking to appeal to the Commission has knowingly failed to pursue his right to appeal an adverse decision to the NFA Appeals Committee in accordance with NFA rules. In proposing such an exclusion, the Commission does not intend to discourage appeals from such disciplinary actions but rather to encourage NFA members to comply with reasonable procedural rules that allow NFA to consider in the first instance problems arising in decisions by its regional Business Conduct Committees. In order to assure that this exclusion does not result in any undue limitation on the right to appeal granted by section 17(h)(2) of the Act, Rule 171.1(b) indicates that an appeal of a matter subject to the exclusion will not be dismissed if extraordinary circumstances otherwise warrant consideration of the appeal.

Also excluded are decisions by NFA in arbitration actions. The Commission believes that NFA performs an important role as a self-regulatory organization through its arbitration program and should be responsible for the fairness and accuracy of the results reached in arbitration actions. The Commission also believes that creation of a formal system for Commission review of NFA arbitration actions would interfere with the simplicity and efficiency of that system of dispute resolution. Decisions in arbitration actions already are subject to court review in certain narrow circumstances. Moreover, in most cases, participants in NFA arbitration have had a prior opportunity to seek resolution of their dispute in a reparations proceeding where they would be entitled to seek review by the Commission. In choosing

If the Commission grants a stay, it will generally remain in effect during the Commission's consideration of the merits of the appeal. The Commission may limit the stay, however, and NFA is not precluded from seeking an order lifting the stay if circumstances indicate that the threat to the commodity futures markets, customers or other members has changed in a material manner since the time of the Commission's decision.

¹⁷ The definition of disciplinary action under Rule 171.2(b) includes all proceedings brought by NFA to enforce its rules that may result in suspension, censure, bar from association with a member, or a fine in excess of \$100. The latter limitation reflects the amount of the appellate filing fee.

¹⁴ The factors include: the regulatory interest that justifies summary action, the nature of the private interests of those affected by the summary action, the risk of erroneous deprivation through the challenged procedures and the probable value of additional or substitute procedural safeguards. *Id.* at 1411, *Citing Brock v. Roadway Express Inc.*, 107 S.

to forego a reparations proceeding by selecting an arbitration proceeding, parties may make a conscious evaluation of the procedural and substantive protections they prefer. In these circumstances, it is not inappropriate to limit the right to appeal in order to preserve the resources of the parties, NFA and the Commission.

B. General Procedural Requirements

Many of the general procedural requirements included in the Commission's proposal are variants of provisions in the Commission's part 9, part 10 or part 12 rules. These include rules: (i) Establishing the requirements for an acceptable method for filing and serving relevant appeal documents (Rules 171.8, 171.9); (ii) designating the Commission's business address for filing purposes (Rule 171.3); (iii) explaining the computation of time periods under the rules and how to request extensions of such periods (Rules 171.4, 171.5); (iv) permitting the filing of motions and settlements (Rules 171.10, 171.12); (v) establishing the criteria for practice before the Commission in proceedings under the rules (Rule 171.13); and (vi) describing the Commission's authority to sanction those who fail to follow the rules and to waive the rules in the interest of justice (Rules 171.11, 171.14). Definitions of many of the terms used in the rules are provided in Rule 171.2.

Parties should note that, in general, documents are considered filed and served on the date they are mailed rather than the date they are received. Because delays in the mail are common, the Commission's proposal increases a party's time to respond by five days when the document the party is responding to is served by mail. See Rule 171.9(b).

C. Commencement of an Appeal Procedure: NFA's Notice

Section 17(h)(1) of the Act authorizes the Commission to prescribe the type of notice NFA must provide to parties in disciplinary and membership denial actions.¹⁸ The Commission proposes to exercise this authority by enacting Rules 171.21 and 171.42. The latter rule applies solely to final decisions in member responsibility actions while the former applies to final decisions in all other disciplinary actions as well as final decisions in membership denial and registration actions. Under Rule 171.21, there are requirements that are common to the three types of actions covered by the rule, and those that differ according

to the particular type of NFA action at issue. All notices under either rule would include a statement acknowledging a party's right (1) to appeal NFA's decision to the Commission and (2) to seek a stay of the decision's effective date. All notices would also include information central to the timely exercise of a party's statutory right to seek review or a stay—the date of service of the notice (the beginning of the thirty day appeal period) and the effective date of NFA's decision.¹⁹

The portion of the notice that would vary with the type of action relates to both the standards applicable in that particular type of action under NFA's rules and NFA's substantive explanation for the particular result reached in the case. The proposed standards are intended to allow NFA to fulfill the notice requirements of Rules 171.21 and 171.42 by providing the parties with a copy of its written decision. By addressing the minimal standards set forth in these rules in its written decisions, NFA would both provide parties with the type of meaningful notice contemplated by section 17(h)(1) of the Act and supply the Commission with the type of explanation of its reasoning necessary to the effective implementation of the Commission's deferential approach to review.²⁰

The Commission proposes that fulfillment of the notice requirement be a condition for the effectiveness of NFA's decision in a disciplinary, membership denial or registration action. Under proposed Rule 171.21(7), any party to the NFA action may request that NFA's notice be stricken if it is defective in any material respect. The Commission also may take such action on its own motion. When a notice is struck, NFA's decision will not be effective until a proper notice is served. In light of the unique importance of the effective date to the successful implementation of a member responsibility action, however, the

Commission does not believe it is appropriate to link the effective date of such decisions to the notice requirement of Rule 171.42.

D. Procedure for Obtaining Review

The time for filing a notice of appeal commences when an effective notice has been served by NFA. Under proposed Rules 171.44 (for member responsibility actions) and 171.23 (all other actions), a notice of appeal need only include the basic information necessary to identify the party filing the appeal and the NFA decision that is the subject of the appeal. A filing fee of \$100 must be included. Within 30 days of the mailing of a notice of appeal, NFA will file two copies of the record of the decision with the Commission's Proceedings Clerk. (Rule 171.24) At that time, NFA will serve the appealing party with a copy of the index of the record it submitted to the Commission as well as a copy of any document included in that record that was not previously served on that party. If the appealing party has any objections to the content of the record, he may raise his objections at the time he files his appeal brief.²¹

Under Rule 171.25, the appealing party must submit an appeal brief within 30 days of the date NFA mailed the record of its decision. If no brief is submitted within the thirty day period, the Commission may dismiss the appeal as unperfected. NFA may file an answering brief within 30 days of the date the appealing party files his brief (Rule 171.26). Either party may request the Commission to hear oral argument by filing a request at the time its brief is submitted (Rule 171.32).

As a general rule, once a case is fully briefed, it will be decided by the Commission. In those cases in which the Commission believes that the result reached in NFA's decision is substantially correct and that none of the arguments on appeal made by the appellant raise important questions of law or policy, the Commission may issue an order of summary affirmance as described in Rule 171.33(b). In appropriate cases, however, the Commission may affirm NFA's decision by Opinion and Order. The Commission may also set aside or modify NFA's decision, or remand for further proceedings (Rule 171.33(a)).

²¹ Once a notice of appeal has been filed pursuant to Rule 171.44, the procedures applied in an appeal from a decision in a member responsibility action are the same as those that apply to appeals in other types of action (Rule 171.45).

¹⁸ The Commission has similar authority under section 17(o)(1) relating to NFA determinations in registration actions.

¹⁹ If NFA intended to request an emergency effective date under Rule 171.22, it should notify the parties of both the effective date under the general rule and of the date it intended to request pursuant to Rule 171.22. Rule 171.22 does not apply to member responsibility actions and NFA is generally free to determine the effective date of its decision in such an action in accordance with its rules.

²⁰ As noted above, that approach focuses in large part on the reasonableness of NFA's factual analysis and legal interpretations. The Commission cannot effectively review decisions that do not include an adequate explanation of the decisionmaker's reasoning. By establishing minimal notice standards applicable to NFA's decisions, the Commission hopes to avoid the delay and duplication of effort that often accompany remands for clarification.

VI. Participation By Individuals That Are Not Parties To The Proceeding

A. Participation By Interested Persons Outside the Commission

In rare instances, decisions made by NFA in disciplinary, membership denial, registration and member responsibility actions will involve broad legal and policy issues that have significance for the futures industry in general. If these issues are raised on appeal to the Commission, they may take on an added significance. In such a situation, individuals or organizations outside the Commission may have an interest in presenting to the Commission their views concerning the proper resolution of the issues raised in the appeal. The Commission is proposing Rule 171.27 to govern participation in proceedings subject to these rules by interested persons outside the Commission.²² Under this rule, such persons may file a motion that establishes their direct and substantial interest in the outcome of the proceeding. In order to avoid delay in the resolution of the proceeding, the motion must be filed promptly.

B. Participation By Interested Persons On the Commission Staff

As a general matter, members of the Commission staff are free to advise the Commission on legal and policy matters that may affect their regulatory responsibilities. The Commission is also generally free to consult with any member of the Commission staff who has experience or expertise in a matter being considered by the Commission. In the context of its adjudicatory programs, however, applicable statutory provisions and principles of fundamental fairness sometimes require that the Commission limit the scope of its contact with certain members of its staff.²³ As discussed *infra*, the

Commission is proposing Rule 171.6 to assure that its decisionmaking process not only operates in a fair, balanced and impartial manner, but also avoids any undue appearance of bias or improper influence. Rules 171.28 and 171.31 are designed to provide an additional method consistent with principles of fundamental fairness for members of the Commission staff to communicate with the Commission concerning the merits of an appeal subject to these rules.

Rule 171.28 grants members of the Commission staff a right to make a written submission of their views concerning the appropriate result in an appeal from a decision of NFA subject to these rules. Members of the Commission staff may indicate their intention to participate in an appellate procedure under these rules by filing a notice of appearance on or before the twentieth day following the date of service of NFA's responsive brief.²⁴ The Commission will generally issue an order after such a notice of appearance is received granting the staff a reasonable period of time to submit a brief and the party with the position opposed to the staff a reasonable period to reply to the staff's arguments. In those rare circumstances when the record establishes that the public interest will not be served by staff participation, the Commission will issue an order prohibiting it. The Commission will not consider, however, submissions from parties to the proceeding that staff participation be denied.

Because members of the Commission staff are not parties to proceedings brought by NFA, they are not in a position to appeal directly a determination by NFA that they believe contravenes fundamental fairness, the purposes of the Act or NFA's own rules. Because of the parallel nature of some of the responsibilities of NFA's staff and the Commission staff,²⁵ a decision by NFA applying the Act or Commission regulations, or even one interpreting requirements of NFA Rules that correspond to Commission regulations, may raise significant concerns about the effect of that decision on Commission programs administered by the staff. In these circumstances, operating Divisions

and offices of the Commission should have an opportunity to make these concerns known to the Commission by requesting the Commission to consider the issue despite the absence of an appeal.

Proposed Rule 171.31(a) would allow members of the Commission Divisions or offices to request that the Commission institute review of a decision by NFA in a disciplinary, membership denial or registration action by filing and serving a memorandum regarding its request prior to the effective date of NFA's decision. The filing of such a memorandum shall automatically stay the effective date of NFA's decision for twenty days. Within fifteen days of the service of the staff's memorandum, NFA may file a response to the staff's request that review be instituted. Pursuant to Rule 171.31(c), the Commission may extend the stay of the effective date of NFA's decision for an additional thirty days while it considers the submissions of the staff and NFA. If the Commission decides to grant the request that review be instituted, it will issue an order to establish a procedure for submission of the record and argument by the parties. The effective date of NFA's decision would remain stayed pending the issuance of a decision on the merits by the Commission.²⁶

VII. Rules Limiting Contacts With Decisional Officials and Prohibiting Non-Public Participation of Members of the Commission Staff When Such Participation Creates an Appearance of Improper Influence

Principles of fundamental fairness applicable to administrative adjudications require that the appearance of fairness and the absence of a probability of outside influences on the adjudicator be maintained. Under the Administrative Procedure Act ("APA"), such concerns about the appearance of fairness and the absence of outside influences generally are addressed by rules prohibiting *ex parte* contacts between Commission decisionmaking officials²⁷ and persons outside the agency interested in the results of the decision and by maintaining a separation between those agency employees who are or have been engaged in an investigative or

²² Absent this rule, such individuals would be prohibited from communicating their views on the appropriate outcome of the proceeding to the Commission. Contacts relevant to the merits of a pending proceeding between a person who might be affected by the outcome of the proceeding and Commission decision-making personnel are prohibited under proposed Rule 171.8. See discussion, *infra*.

²³ *Amos Treat & Co. v. Securities and Exchange Commission*, 306 F.2d 260 (DC Cir. 1962). More recently, the Court of Appeals for the Sixth Circuit described the requirements of fundamental fairness in an administrative adjudicatory setting as follows:

This concept requires the appearance of fairness and the absence of any probability of outside influences in the adjudicator; it does not require proof of actual partiality.

Utica Picking Co. v. Block, 781 F.2d 71, 77 (8th Cir. 1986).

²⁴ While the staff is permitted to make this filing within 20 days of NFA's submission of its answering brief, the Commission intends that the staff give notice of its intention to participate as soon as practicable so that unnecessary delays in proceedings will be avoided.

²⁵ While the staffs of NFA and the Commission are independent and each organization has separate authority and regulatory responsibility, cooperation and coordination of regulatory actions is necessary for the efficient and effective exercise of either organization's authority.

²⁶ Pursuant to Rule 171.31(d), the Commission has also retained authority to initiate review of a decision by NFA on its own motion.

²⁷ As a general matter, the decisionmaking officials for Commission adjudicatory appeals include Commissioners, members of the Commissioners' personal staffs and members of the Commission's Opinions Section.

prosecuting function related to the proceeding and those agency employees who give advice to Commissioners and the members of their staff concerning the merits of a decision.

Proposed Rule 171.6 would place restrictions on the contracts Commission decisionmaking officials may have with (1) NFA, (2) NFA members that are opposing NFA in its action, and (3) any other person outside the Commission who has an interest in NFA's action. If a Commission decisional official is aware that a notice of appeal filed in accordance with § 171.23 of these rules has been served by the Proceedings Clerk on NFA, he may not communicate with any of the individuals included in the three categories listed above about the merits of NFA's action unless the communication is preceded by reasonable notice to all parties to the action and is made on the public record. The Commission invites interested persons to comment on the merits of applying these prohibitions at the time that an action subject to these rules is commenced by NFA.

A decisionmaking official who violates this prohibition may be subject to sanction under Rule 171.6(c)(2). A party who knowingly makes an *ex parte* contact with a Commission decisionmaking official also may be subject to sanction under the rule.

VIII. Delegation of authority

In the Commission's experience delegation of authority is a practical necessity in light of the rapid growth in the Commission's appellate jurisdiction. Personal involvement by members of the Commission in the many decisions that must be made in the various cases pending on its appellate docket is possible, but only at a significant cost in both time and resources. The Commission's experience with the exercise of the delegations of authority made in the part 10 and part 12 Rules²⁸ have convinced it that significant authority may be safely delegated as long as parties are free to challenge the staff's decisions in a timely manner. For this reason, the Commission proposes to adopt Rule 171.50, delegating authority to the Chief of the Opinions Section to rule on certain limited matters. Decisions made pursuant to delegation are subject to reconsideration by the Commission if a motion is filed within seven days of the service of the ruling.

²⁸ There is a similar delegation of authority included in the recently amended part 9 Rules. Because of the limited number of cases filed under these rules, the Commission's experience with this delegation has been limited.

The Chief may refer any matter to the Commission for its determination in the first instance and the Commission also may instruct the Chief to submit a matter for its consideration.

IX. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., imposes certain requirements on federal agencies in connection with their conducting or sponsoring of any collection of information as defined by that Act. In compliance with those requirements, the Commission has submitted this proposed rule and its associated information collection requirements to the Office of Management and Budget. The burden associated with this entire collection, including this proposed rule, is as follows:

Average burden hours per response: 1.6.
Number of Respondents: 105.
Frequency of Response: 1-150.

Persons wishing to comment on the information which would be required by these proposed rules should contact Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503, (202) 395-7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581, (202) 254-9880.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 et seq., requires agencies that propose rules consider the impact those rules will have on small businesses. With respect to persons seeking Commission review of NFA adjudicatory decisions, the proposed regulation would impose no additional regulatory burden. Commission review of NFA disciplinary and membership denial actions are presently carried out by the Commission pursuant to generally comparable procedures adopted on a case-by-case basis. Commission review of NFA registration actions is presently governed by comparable procedures under the provisions of subpart F of part 3. The proposed revisions would, in fact, ease the regulatory burden to some extent by providing greater certainty and predictability concerning the standards and procedures governing such review.

Accordingly, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman of the Commission hereby certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 171

Administrative practice and procedure, Commodity exchanges, Commodity futures.

PART 3—[AMENDED]

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a), 8a, 17(h), 17(i) and 17(o) thereof, 7 U.S.C. 4a, 12a, 21(h), 21(i) and 21(o), the Commission hereby proposes to amend chapter I of title 17 of the Code of Federal Regulations as follows:

1. The authority citation for part 3 continues to read as follows:

Authority: 17 U.S.C. 2, 4, 4a, 6c, 8d, 8e, 8f, 6k, 6m, 6n, 6p, 12a, 13c, 16a, unless otherwise noted.

§§ 3.75 to 3.91 Subpart E [Removed]

1a. 17 CFR part 3, subpart E, §§ 3.75 to 3.91, inclusive, are proposed to be removed.

2. 17 CFR part 171 is proposed to be added to read as follows:

PART 171—RULES RELATING TO REVIEW OF NATIONAL FUTURES ASSOCIATION DECISIONS IN DISCIPLINARY, MEMBERSHIP DENIAL, REGISTRATION AND MEMBER RESPONSIBILITY ACTIONS

Subpart A—General Provisions

- | | |
|--------|------------------------------------|
| Sec. | |
| 171.1 | Scope of rules. |
| 171.2 | Definitions. |
| 171.3 | Business address; hours. |
| 171.4 | Computation of time. |
| 171.5 | Extension of time. |
| 171.6 | Ex parte communications. |
| 171.7 | [Reserved]. |
| 171.8 | Filing with the Proceedings Clerk. |
| 171.9 | Service. |
| 171.10 | Motions. |
| 171.11 | Sanctions. |
| 171.12 | Settlement. |
| 171.13 | Practice before the Commission. |
| 171.14 | Waiver of rules. |

Subpart B—Notice and Effective Date of Final Decisions in Disciplinary, Membership Denial and Registration Actions

- | | |
|--------|--|
| 171.20 | [Reserved]. |
| 171.21 | Notice of final decision. |
| 171.22 | Effective date of final decisions in disciplinary, membership denial and registration actions. |
| 171.23 | Notice of appeal. |
| 171.24 | Submission of the record. |
| 171.25 | Appeal brief. |
| 171.26 | Answering brief. |
| 171.27 | Limited participation by interested persons. |
| 171.28 | Participation by Commission staff. |

Subpart C—Commission Review of Final Decisions in Disciplinary, Membership Denial and Registration Actions

- 171.30 Scope of review.
 171.31 Commission review in the absence of an appeal.
 171.32 Oral argument.
 171.33 Final decision by the Commission.
 171.34 Standards of review.

Subpart D—Commission Review of Decisions in Member Responsibility Actions

- 171.40 Notice of the commencement of a member responsibility action.
 171.41 Petition for stay of effective date of a member responsibility action pending a hearing by the National Futures Association.
 171.42 Notice of a final decision of the National Futures Association in a Member Responsibility action.
 171.43 Petition for a stay of the effective date of a final decision of the National Futures Association in a member responsibility action.
 171.44 Notice of appeal.
 171.45 General procedures.
 171.46 Standards of review.

Subpart E—Delegation of Functions

- 171.50 Delegation to the Chief of the Opinions Section.

Authority: 7 U.S.C. 4a, 12a and 21.

Subpart A—General Provisions

§ 171.1 Scope of rules.

(a) *Matters included.* Unless specifically excluded by subsection (b), this part governs review by the Commission, pursuant to sections 17(h), (i) and (o) of the Commodity Exchange Act ("Act"), as amended, of any disciplinary action, membership denial action, registration action or member responsibility action taken by the National Futures Association or any registered futures association. Unless specifically indicated, references in this part to the National Futures Association shall also include any other registered futures association.

(b) *Matters excluded.* The Commission will not review under these rules the following decisions by the National Futures Association:

(1) A decision in a disciplinary action if the party aggrieved by the decision knowingly failed to pursue the right to appeal an adverse decision to the Appeals Committee of the National Futures Association and there are no extraordinary circumstances that otherwise warrant Commission consideration of the aggrieved party's appeal;

(2) A decision in an arbitration action brought pursuant to section 17(b)(10) of the Act or any rule of the National Futures Association.

(c) *Appeals from excluded decisions.* If the Chief of the Opinions Section or

his delegate determines that a notice of appeal submitted to the Commission is from a decision that is excluded from review under this part, he may strike it and order it returned to the aggrieved party who submitted it.

(d) *Applicability of these part 171 rules.* Unless otherwise ordered, these rules will apply in their entirety to all appeals and matters relating thereto filed on or after (the effective date of these rules). Any part 171 proceeding commenced prior to (the effective date of these rules) continue to be governed by the procedures established in subpart F of part 3 of the Commission's regulations, if applicable, or by the procedures established for that proceeding by Commission order. Parties to any proceeding may, however, request by motion that the matter be governed by the provisions of this part.

§ 171.2 Definitions.

For purposes of this part:

(a) *Commission decisional employee* includes any member of the Commission staff who participates in, or may be reasonably expected to participate in, the substantive decision in any proceeding under this part. It does not include Commissioners or members of their personal staff.

(b) *Disciplinary action* includes any proceeding brought by the National Futures Association to enforce its rules that may result in expulsion, suspension, censure, bar from association with a member, fine in excess of \$100 or any comparable sanction being imposed on a member or a person associated with a member.

(c) *Ex parte communication* shall include any communication, whether written or oral, which is both (1) not preceded by reasonable notice to all parties to a proceeding, and (2) not made on the public record. It shall not include requests made to the Commission's Opinions Section or Office of Proceedings for status reports or for an interpretation of these rules.

(d) *Final decision* means the decision that terminates the proceeding before the National Futures Association on the action that is the subject of the notice of appeal filed with the Commission.

(e) *To mail* means to place in the United States mail (or to deliver to an overnight delivery service of established reliability) a properly addressed and post-paid document. Unless otherwise provided, documents filed and served by mail must be sent by no less expeditious means than first class United States mail.

(f) *Member* includes any person admitted to membership by the National Futures Association.

(g) *Member responsibility action* includes any action in which, based on a finding by the National Futures Association that there is reason to believe that summary action is necessary to protect the commodity futures markets, customers or other members of the association, a member or person associated with a member may be summarily suspended from membership or association with a member, required to restrict operations or otherwise directed to take remedial action.

(h) *Membership denial action* includes any proceeding brought by the National Futures Association to (1) determine whether an applicant should be admitted to membership or be permitted to be associated with a member, (2) determine whether an applicant should be admitted to membership or be permitted to be associated with a member on a conditional basis, or (3) determine whether to revoke or restrict the membership or association status of any person who is a member or is associated with a member.

(i) *Party* includes any person who has been the subject of a disciplinary action, membership denial action, or registration action by the National Futures Association; the National Futures Association itself; any person granted permission to participate as a party pursuant to § 171.27 of these rules; and any Division of Office of the Commission that files a Notice of Appearance pursuant to § 171.28 of these rules.

(j) *Person associated with a member* Includes any person permitted to register as an associate of a member by the National Futures Association.

(k) *Record of the proceeding* shall include the order appealed from, the findings or report on which the order is based, the pleadings, evidence and proceedings before the National Futures Association decisionmaker and a copy of any rule of the National Futures Association that is material to the order.

(l) *Registration action* includes any proceeding brought by the National Futures Association, pursuant to authority delegated by the Commission, to grant, condition, deny, suspend, restrict, or revoke the registration of any person.

(m) *Rule of the National Futures Association* includes any article of incorporation, bylaw, rule, regulation, resolution or written interpretation of stated policy of the National Futures Association.

§ 171.3 Business address; hours.

The principal office of the Commission is located at 2033 K Street NW., Washington, DC 20581. It is open each day, except Saturdays, Sundays, and legal public holidays, from 8:15 a.m. until 4:45 p.m., eastern standard time or eastern daylight savings time, whichever is currently in effect in Washington, DC.

§ 171.4 Computation of time.

(a) *In general.* In computing any period of time prescribed by these rules or allowed by the Commission, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a legal holiday. In the latter circumstances, the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday. Intermediate Saturdays, Sundays, and legal holidays shall be included in the computation unless the period of time prescribed or allowed is less than seven (7) days.

(b) *Date of service of orders.* In computing any period of time involving the date of service of an order, the date of service shall be the date the order is mailed or hand delivered by the Proceedings Clerk, which, unless otherwise indicated, shall be the date stamped on the order by the Proceedings Clerk.

§ 171.5 Extension of time.

(a) *In general.* Except as otherwise provided by these rules, for good cause shown, on its own motion or the motion of a party, the Commission may at any time extend or shorten the time prescribed by the rules for filing any document. In any instance in which a specific time period is not prescribed in this part for an action to be taken concerning any matter, the Commission may establish a time for that action.

(b) *Filing of motion.* Absent extraordinary circumstances, when the time period that has been prescribed for an action to be taken concerning any matter exceeds seven days, requests for extension of that time period shall be filed at least five days prior to the expiration of time period provided and shall include an explanation of the facts and circumstances that justify the extension.

§ 171.6 Ex parte communications.

(a) *Prohibition of ex parte communications.* (1) No party to a proceeding before the Commission under these rules and no person outside the Commission who has a direct or indirect interest (pecuniary or

otherwise) in the outcome of the proceeding or might be aggrieved by the outcome of the proceeding shall make or knowingly cause to be made an ex parte communication relevant to the merits of the proceeding subject to these rules to a Commissioner, member of the personal staff of a Commissioner or Commission decisional employee.

(2) No Commissioner, member of the personal staff of a Commissioner or Commission decisional employee shall make or knowingly cause to be made to a party to a proceeding subject to these rules or to any person outside the Commission who has a direct or indirect interest (pecuniary or otherwise) in the outcome of the proceeding or might be aggrieved by the outcome of the proceeding, an ex parte communication relevant to the merits of the proceeding subject to these rules.

(b) *Procedure for handling.* Any Commissioner, member of a Commissioner's personal staff or Commission decisional employee who receives, or who makes or knowingly causes to be made, an ex parte communication prohibited by paragraph (a) of this section shall:

- (1) Place on the public record of the proceeding:
 - (i) All such written communications;
 - (ii) Memoranda stating the substance of all such oral communications; and
 - (iii) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section; and

(2) Promptly give written notice of such communications and responses thereto to all parties to the proceedings to which the communication or responses relate.

(c) *Sanctions.* (1) Upon receipt of an ex parte communication knowingly made or knowingly caused to be made by a party in violation of the prohibition contained in paragraph (a)(1) of this section, the Commission may, to the extent consistent with the interests of justice and the policies of the Act, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(2) Any Commissioner, member of a Commissioner's personal staff or Commission decisional employee who knowingly makes or knowingly causes to be made, or who knowingly solicits or knowingly causes the solicitation of, an ex parte communication which violates the prohibitions contained in paragraph (a)(2) of this section may be deemed to have engaged in conduct of the type proscribed by 17 CFR 140.735-3(b)(3).

(d) *Applicability of prohibition and sanctions against ex parte communications.* (1)(i) The prohibitions of this section shall begin to apply at the time that a copy of a notice of appeal filed in accordance with § 171.23 of this part has been served by the Proceedings Clerk on the National Futures Association: *Provided, however,* That in no case shall they begin to apply later than the time at which a proceeding before the Commission under these rules is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge.

(ii) The prohibitions of this section shall continue in effect until the time to file a petition for rehearing from the final order of the Commission has expired. In the event a petition for rehearing is filed, these prohibitions shall cease if and when the petition for rehearing is denied.

(iii) The Commission may, by specific order entered in a particular proceeding, determine that these prohibitions shall commence from some date prior, or shall continue until a date subsequent, to the times specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this section.

(2) The sanctions in paragraph (c)(1) of this section shall not apply to a person making a prohibited communication (or causing it to be made) absent evidence that the person acted with actual or constructive knowledge that the person receiving the communication was a Commissioner, member of the personal staff of a Commissioner or a Commission decisional employee.

§ 171.7 [Reserved]**§ 171.8 Filing with the Proceedings Clerk.**

(a) *How to file.* Any document that is required by this part to be filed with the Proceedings Clerk shall be filed by delivering it in person or by mail to: Proceedings Clerk, Office of Proceedings, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. To be timely filed under this part, a document must be delivered or mailed to the Proceedings Clerk within the time prescribed for filing.

(b) *Proof of filing.* Proof of filing shall be made by attaching to the document for filing an affidavit of filing executed by any person 18 years of age or older or a proof of filing executed by an attorney-at-law qualified for practice before the Commission. The proof of filing shall certify that the attached

document was delivered by hand to the Proceedings Clerk or deposited in the United States mail, with first-class postage prepaid, (or delivered to an overnight delivery service of established reliability) addressed to the Proceedings Clerk, Office of Proceedings, 2033 K Street, NW., Washington, DC 20581, on the date specified in the affidavit.

(c) *Formalities of filing*—(1) *Number of copies*. Unless otherwise provided, any person filing a document with the Proceedings Clerk shall provide two conformed copies in addition to the original.

(2) *Title page*. All documents filed with the Proceedings Clerk shall include, at the head thereof, or on a title page, the name of the Commission, the title of the proceeding, the docket number (if one has been assigned by the Proceedings Clerk), the subject of the particular document and the name of the person on whose behalf the document is being filed.

(3) *Paper, spacing, type*. All documents filed with the Proceedings Clerk shall be typewritten, must be on one grade of good white paper no less than 8 or more than 8½ inches wide and no less than 10½ or more than 11½ inches long, and must be bound on the top only. They must be double-spaced, except for long quotations (3 or more lines) and footnotes which should be single-spaced.

(4) *Signature*—(i) *By whom*. All documents filed with the Proceedings Clerk shall be signed personally in ink:

(A) By the person or persons on whose behalf they are tendered for filing.

(B) By a general partner, officer or director of a partnership, corporation, association, or other legal entity, or

(C) By an attorney-at-law having authority with respect thereto. The Proceedings Clerk may require appropriate evidence of the authority of a person subscribing a document on behalf of another person.

(ii) *Effect*. The signature on any document of any person acting either for himself or as attorney or agent for another constitutes certification by him that:

(A) He has read the document subscribed and knows the contents thereof;

(B) If executed in any representative capacity, it was done with full power and authority to do so;

(C) To the best of his knowledge, information, and belief, every statement contained in the document is true and not misleading; and

(D) The document is not being interposed for delay.

§ 171.9 Service.

(a) *General requirements*. Unless otherwise provided, all documents filed with the Proceedings Clerk must be served upon all parties on the same day.

(b) *Manner of service*. Service may be made by personal delivery (effective upon receipt) or by mail (effective upon deposit). When service is effected by mail, the time within which the person served may respond thereto shall be increased by five days.

(c) *Proof of service*. Proof of service shall be made by filing with the Proceedings Clerk, at the same time as the relevant document is filed, an affidavit of service executed by a person 18 years of age or older or a certificate of service executed by an attorney qualified to practice before the Commission. The proof of service shall state that service has been made and identify the person served, the date of service and the manner of service.

(d) *Designation of person to receive service*. The first document filed in a proceeding by or on behalf of any party must state on the first page the name, postal address and telephone number of the person authorized to receive service for the party of all documents filed in the proceeding. Thereafter, service of documents shall be made upon the person authorized unless service on a different authorized person or on the party himself is authorized by the Commission, or unless pursuant to § 171.8 the person authorized is changed by the party upon due notice to all other parties. Parties shall file and serve notification of any changes in the information provided pursuant to this subparagraph as soon as practicable after the change occurs.

(e) *Service of orders and decisions*. A copy of all notices, rulings opinions and orders of the Commission shall be served on each of the parties by the Proceedings Clerk. Service will be deemed complete upon deposit in the mail.

§ 171.10 Motions.

(a) *In general*. An application for a form of relief not otherwise specifically provided for in this part shall be made by a written motion, filed with the Proceedings Clerk. The motion shall state the relief sought, basis for the relief and the authority relied upon.

(b) *Answers to motions*. Unless otherwise provided, a party may file a written response to a motion within five days after service of the motion.

(c) *Motions for procedural orders*. Motions for procedural orders, including motions for extensions of time, may be acted on at any time, without awaiting a response thereto. Any party adversely

affected by such action may request reconsideration, vacation or modification of the action.

(d) *Dilatory motions*. Frivolous or repetitive motions dealing with the same subject matter shall not be permitted.

§ 171.11 Sanctions.

In the event a party fails to fulfill his obligations under these Rules, the Commission may impose appropriate sanctions including dismissal of the appeal or summary reversal of the decision under appeal. Sanctions may be imposed on the motion of a party or on the Commission's own motion.

§ 171.12 Settlement.

At any time before the Commission has reached a final determination in a proceeding, the parties may request dismissal of the appeal based on a settlement agreement. If, in its view, the settlement is consistent with the public interest, the Commission will dismiss the proceeding.

§ 171.13 Practice before the Commission.

(a) *Practice*—(1) *By non-attorneys*. An individual may appear *pro se* (on his own behalf); a general partner may represent the partnership; a *bona fide* officer of a corporation, trust or association may represent the corporation, trust or association.

(2) *By attorneys*. An attorney-at-law who is admitted to practice before the highest Court in any State or territory, or of the District of Columbia, who has not been suspended or disbarred from appearance and practice before the Commission in accordance with the provisions of part 14 of this chapter may represent parties as an attorney in proceedings before the Commission.

(b) *Debarment of counsel or representative during the course of a proceeding*. Whenever, while a proceeding is pending before the Commission, the Commission finds that a person acting as counsel or representative for any party to the proceeding is guilty of contemptuous conduct, the Commission may order that such person be precluded from further acting as counsel or representative in a proceeding subject to these rules. The Commission may suspend the proceedings for a reasonable time for the purpose of enabling the party to obtain other counsel or representative.

(c) *Withdrawal from representation*. Withdrawal from representation of a party will be only by leave of the Commission. Such leave to withdraw may be subject to conditions including submission of an affidavit averring that the party represented has actual

knowledge of the withdrawal and providing the name and address of a successor counsel (or representative) or a statement that the represented party has determined to proceed *pro se*. If the party proceeds *pro se*, the statement shall include the address where the party can thereafter be served.

§ 171.14 Waiver of rules.

To prevent undue hardship on any party or for other good cause shown, the Commission may waive any rule in this part in a particular case and may order proceedings in accordance with its direction. Such an order shall be based upon a determination that no party will be prejudiced thereby and that the ends of justice will be served. Reasonable notice will be given to all parties of any action taken pursuant to this paragraph.

Subpart B—Notice and Effective Date of Final Decisions in Disciplinary, Membership Denial and Registration Actions

§ 171.20 [Reserved]

§ 171.21 Notice of final decision.

(a) *When required.* The National Futures Association shall promptly serve all parties, as well as the Proceedings Clerk and the Secretary of the Commission, with a written notice of any final decision in a disciplinary action, membership denial action or registration action subject to these rules. The notice may be contained in the written decision issued by the National Futures Association.

(b) *Content of the notice.* At a minimum, the notice shall provide the following information:

(1) The name of the parties to the proceeding;

(2) The date the notice was served and the effective date of the decision;

(3) A statement informing the parties of their right to appeal the decision to the Commission pursuant to § 171.28 as well as their right to seek a stay of the effective date of the decision pursuant to § 171.27;

(4) *For a disciplinary action.* (i) A statement setting forth the relevant acts or practices engaged in or omitted by the parties to the proceeding;

(ii) A statement setting forth the specific rule or rules of the association violated by the relevant acts or practices or omissions to act of the parties to the proceeding;

(iii) A statement setting forth the penalty imposed and the basis for its imposition.

(5) *For a membership action.* (i) The specific grounds for the denial, bar, expulsion, or restriction;

(ii) The findings made concerning those grounds;

(iii) An explanation of the result reached in light of the grounds for ineligibility found and the findings made.

(6) *For a registration action.* (i) The statutory disqualification at issue;

(ii) The findings made concerning the statutory disqualification;

(iii) An explanation of the result reached in light of the statutory disqualification shown and the findings made.

(c) *Effect of inadequate notice.* (1) If the National Futures Association issues a notice of a final decision subject to these rules that is not substantially consistent with the requirements of this section, and the record does not establish that the errors therein are harmless, the notice may be stricken. The Commission may act on its own motion or on the motion of a party.

(2) When a notice is struck, the final decision of the National Futures Association shall not be effective until a proper notice is served.

§ 171.22 Effective date of final decisions in disciplinary, membership denial and registration actions.

(a) *General rule.* A final decision of the National Futures Association in a disciplinary action, membership denial action or registration action shall be effective thirty days after service of the notice described in § 171.21.

(b) *Petitions for stay pending review or for an emergency effective date.*—(1) *Stay pending review.* Within ten days of service of the notice described in § 171.21, any aggrieved party may seek from the Commission a stay pending consideration of the merits of an appeal by filing and serving an appropriate petition. The mere filing of such a petition shall not stay the effective date of the decision. The burden of persuasion shall rest with the party seeking the stay. If the Commission does not grant the petition prior to the effective date of the decision under review, it shall be deemed denied. All petitions for stay must be accompanied by a notice of appeal.

(2) *Emergency effective date.* Within ten days of service of the notice described in § 171.21, the National Futures Association may seek from the Commission an order establishing an emergency effective date for the decision by filing and serving an appropriate petition. The mere filing of such a petition shall not alter the effective date of the decision. The burden of persuasion rests with the National Futures Association. If the Commission does not grant the petition

by the date specified as the emergency effective date, it shall be deemed denied.

(3) *Contents of petition for stay and petition for an emergency effective date.* A petition for stay or for an emergency effective date shall be in writing. Material factual allegations shall be supported by an affidavit or other sworn statement unless the parties stipulate that the material facts are not in dispute.

(4) *Response.* Within five days of the service of the petition, a party may file in opposition to the petition. Material factual allegations shall be supported by an affidavit or other sworn statement unless the parties stipulate that the material facts are not in dispute.

(c) *Standards for determining petitions for a stay or an emergency effective date petition.* In reviewing petitions filed under this section, the Commission shall consider:

(1) The likelihood that a challenge to the merits of the decision will be successful; and

(2) The likelihood that the denial of the petition would result in irreparable harm to the petitioner; and

(3) The effect a grant of the petition would have on the opposing party; and

(4) The effect a grant or denial of the petition would have on the public interest.

(d) *Expedited consideration.* If, in its view, it is necessary to protect the petitioner's right to a meaningful determination of the issues raised in the petition, the Commission may act upon a petition for a stay or for an emergency effective date prior to its receipt of an opposing party's response. Any party aggrieved by such expedited consideration may seek reconsideration within seven days of service of the decision.

§ 171.23 Notice of appeal.

(a) *Time to file.* Any party aggrieved by the final decision of the National Futures Association in a disciplinary, membership denial or registration action may, within thirty days of the National Futures Association's service of the notice described in § 171.21, file a notice of appeal with the Proceedings Clerk. The filing of such a notice shall not stay the effective date of the decision.

(b) *Contents.* The notice of appeal shall consist of a brief statement indicating that the party is requesting Commission review of an action of the National Futures Association. It should identify (1) the name and address of the person appealing and, if represented, the name and address of his representative; (2) the case name and docket number of the National Futures Association

proceeding; and (3) the date of the decision.

(c) *Filing fee.* Each notice of appeal must be accompanied by a nonrefundable filing fee of \$100. This amount may be paid by check, bank draft or money order, payable to the Commodity Futures Trading Commission.

(d) *Defective notices of appeal.* Notices of appeal that are untimely or not accompanied by the filing fee shall not be accepted by the Proceedings Clerk absent a showing, by motion, of excusable neglect.

§ 171.24 Submission of the record.

Within thirty days after service of a notice of appeal, the National Futures Association shall file with the Proceedings Clerk two copies of the record of the proceeding (as defined by § 171.2(i)). The record shall be bound as a unit, chronologically indexed and tabbed, and certified as correct by a duly authorized official, agent or employee of the National Futures Association. The National Futures Association shall serve on the party appealing, in lieu of the record, a copy of the index of the record and a copy of any document in the record not previously served on the party appealing. If the party appealing objects to the materials included or excluded in preparing the record, he shall file his objections with his brief on appeal. The Commission may, at any time, direct that an omission or misstatement be corrected and, if necessary, that a supplemental record be prepared and filed.

§ 171.25 Appeal brief.

(a) *Time to file.* Any person who has filed a notice of appeal in accordance with the provisions of § 171.23, shall perfect the appeal by filing an appeal brief with the Proceedings Clerk within thirty days after service of the record by the National Futures Association. The Commission may dismiss any appeal for which an appeal brief is not timely filed.

(b) *Contents.* Each appeal brief submitted to the Commission pursuant to this section shall include, in the order indicated:

(1) A statement of the issues presented for review;

(2) A statement of the case. The statement shall indicate briefly the nature of the case and include a full description of the action being challenged. There shall follow a clear and concise statement of all facts relevant to the consideration of the appeal with appropriate citations to the record;

(3) An argument. The argument shall contain the contentions of the appellant with respect to the issues presented and the reasons supporting those contentions. It shall cite specifically to the relevant authorities and to those parts of the record that support appellant's contentions; and

(4) A conclusion stating the precise relief sought.

(c) *Length of appeal brief.* Without prior leave of the Commission, the appeal brief may not exceed thirty-five pages, exclusive of any table of contents, table of cases, index and appendix containing transcripts of testimony, exhibits, rules, regulations or similar materials.

§ 171.26 Answering brief.

(a) *Time for filing answering brief.* Within thirty days after service of the appeal brief, the National Futures Association shall file with the Proceedings Clerk an answering brief.

(b) *Contents of answering brief.* The contents of the answering brief generally shall be consistent with those set forth in § 171.25(b) but may omit a statement of the issues and a statement of the case if the National Futures Association does not dispute the issues or the statement of the case contained in the appeal brief.

(c) *Length of the answering brief.* Without prior leave of the Commission, the answering brief may not exceed thirty five pages, exclusive of any table of contents, table of cases, index and appendix containing transcripts of testimony, exhibits, statutes, rules, regulations or similar materials.

§ 171.27 Limited participation by interested persons.

Upon motion of any person asserting a direct and substantial interest in the outcome of a proceeding conducted under this part or, on its own motion, the Commission may permit, or solicit, limited participation in the proceeding by such interested person. A motion for leave to participate in the proceeding shall be filed promptly, shall identify the interest of that person and shall show why participation in the proceeding by that person would serve the public interest. If the Commission determines that participation would serve the public interest, it shall by order establish a supplementary briefing schedule for the interested person and the parties to the proceeding.

§ 171.28 Participation by Commission staff.

The Division of Enforcement, the Division of Trading and Markets or the Division of Economic Analysis may

participate in any proceeding by filing a notice of appearance. Such a notice shall be filed and served on or before the twentieth day following the date of service of its brief by the National Futures Association. The Commission shall by order establish a supplementary briefing schedule for the Commission staff and other parties to the proceeding. If it concludes that participation of the Commission staff will not serve the public interest, the Commission shall prohibit further participation.

Subpart C—Commission Review of Final Decisions in Disciplinary, Membership Denial and Registration Actions

§ 171.30 Scope of review.

On review, the Commission may, in its discretion and after appropriate consideration of the notice given to the parties, consider *sua sponte* any issues arising from the record before it and may base its determination thereon. The Commission may also limit its consideration to those issues specifically raised in the parties' briefs, treating all other issues as waived.

§ 171.31 Commission review in the absence of an appeal.

(a) *Request by Commission staff.* At any time prior to the effective date of a final decision of the National Futures Association in a disciplinary, membership denial or registration action, the Division of Enforcement, the Division of Trading and Markets or the Division of Economic Analysis may file and serve a memorandum requesting the Commission to institute review of the National Futures Association proceeding. The filing of such a memorandum shall stay the effective date of the decision at issue for twenty days.

(b) *Response by the National Futures Association.* The National Futures Association may file a response to the memorandum of the Commission staff within fifteen days of the service of the memorandum.

(c) *Commission determination of staff request.* To preserve the status quo while it determines whether review is appropriate, the Commission may extend the stay of the effective date of the decision at issue for an additional 30 days. If the Commission decides to take review, the effective date of the decision at issue shall be stayed pending the decision of the Commission, unless otherwise ordered. The Commission shall by order establish the procedure for submission of both the record of the

proceeding and the briefs of the parties to the proceeding.

(d) *Commission review on its own motion.* At any time prior to the effective date of a final decision of the National Futures Association in a disciplinary, membership denial or registration action, the Commission may take review of a decision by issuing an appropriate order. If the Commission determines that it is appropriate to take review on its own motion, it shall by order establish the procedure for submission of both the record of the proceeding and the briefs of the parties.

§ 171.32 Oral argument.

(a) *On motion of Commission.* On its own motion, the Commission may, in its discretion, hear oral argument in a proceeding.

(b) *On request of party.* Any party may file with the Proceedings Clerk a request in writing for the opportunity to present oral argument before the Commission, which the Commission may, in its discretion, grant or deny. A request under this paragraph must be filed concurrently with the party's brief.

(c) *Reporting and transcription.* Oral argument before the Commission will be recorded and transcribed unless the Commission directs otherwise. In the event the Commission affords the parties the opportunity to present oral argument before the Commission, the oral argument will proceed in accordance with the provisions of § 10.103(b) of this chapter.

§ 171.33 Final decision by the Commission.

(a) *Opinion and order.* Upon review, the Commission may affirm, modify, set aside, or remand for further proceedings, in whole or in part, the decision of the National Futures Association. The Commission's decision will be contained in its opinion and order which will be based upon the record before it, including the record of the registered futures association proceeding, briefs submitted to the Commission by the parties and any oral argument made in accordance with § 171.32. Except as provided in paragraph (b) of this section, the opinion and order will constitute the final decision of the Commission, effective upon service on the parties. In the event the Commission is equally divided as to its decision, the decision of the National Futures Association shall be affirmed without a Commission opinion.

(b) *Order of summary affirmance.* If the Commission finds that the result reached in the decision of the National Futures Association is substantially correct and that none of the arguments

on appeal made by the appellant raise important questions of law or policy, the Commission may, by appropriate order, summarily affirm the decision without opinion. The decision of the National Futures Association shall constitute the Commission's final decision, effective upon service. Unless the Commission expressly indicates otherwise in its order, an order of summary affirmance does not reflect a Commission determination to adopt the rationale of the National Futures Association, and neither the order of summary affirmance nor the underlying order shall serve as Commission precedent in other proceedings.

§ 171.34 Standards of review.

(a) *Disciplinary actions.* In reviewing a final decision of the National Futures Association in a disciplinary action, the Commission shall consider whether:

(1) The proceedings were conducted in a manner consistent with fundamental fairness;

(2) The proceedings were conducted in a manner consistent with the rules of the National Futures Association;

(3) The weight of the evidence supports the findings of the National Futures Association concerning the relevant acts or practices engaged in or omitted;

(4) The determination that the acts or practices engaged in or omitted violated rules of the National Futures Association rests on a reasonable interpretation of the rules at issue;

(5) The National Futures Association's application of its rules is consistent with the purposes of the Act;

(6) The National Futures Association's choice of sanction is excessive or oppressive in light of the violations found having due regard for the public interest.

(b) *Membership denial actions.* In reviewing a final decision of the National Futures Association in a membership denial action, the Commission shall consider whether:

(1) The proceedings were conducted in a manner consistent with fundamental fairness;

(2) The proceedings were conducted in a manner consistent with the rules of the National Futures Association;

(3) The weight of the evidence supports the findings made or adopted in the final decision;

(4) The conclusion of the National Futures Association is consistent with the purposes of the Act.

(c) *Registration actions.* In reviewing a decision of the National Futures Association in a registration action, the Commission shall consider whether:

(1) The proceedings were conducted in a manner consistent with fundamental fairness;

(2) The proceedings were conducted in a manner consistent with the rules of the National Futures Association;

(3) The weight of the evidence supports the findings made or adopted in the final decision;

(4) The conclusion of the National Futures Association is consistent with the purposes of the Act.

Subpart D—Commission Review of Decisions in Member Responsibility Actions

§ 171.40 Notice of the commencement of a member responsibility action.

The notice of a Member Responsibility Action provided by the National Futures Association pursuant to its rules shall advise the affected parties of their right to petition the Commission pursuant to § 171.41 to stay the effective date of the action pending a hearing before the National Futures Association on the factual issues relevant to the suspension, restriction or remedial action ordered.

§ 171.41 Petition for a stay of effective date of a member responsibility action pending a hearing by the National Futures Association.

(a) *Time to file.* Within ten days after the National Futures Association serves the notice required by § 171.40, any party aggrieved by the National Futures Association's determination that the member responsibility action should be effective prior to the opportunity for a hearing on the factual issues relevant to the suspension, restriction or remedial action imposed may petition the Commission to stay its effectiveness pending completion of further proceedings by the National Futures Association. The burden of persuasion shall rest with the party seeking the stay.

(b) *Content.* A petition for stay shall meet the content requirements set forth in § 171.22(b)(3).

(c) *Response.* A response may be filed by the National Futures Association in accordance with § 171.22(b)(4).

(d) *Standards for granting petition for stay.* In reviewing petitions to stay the effectiveness of the member responsibility action pending completion of further proceedings, the Commission shall consider:

(1) Whether, in the circumstances presented, the notice and opportunity for a hearing provided by the National Futures Association are consistent with principles of fundamental fairness; and

(2) The likelihood that the denial of the petition would result in irreparable harm to petitioner; and

(3) The effect a grant of the petition would have on the interests of the National Futures Association; and

(4) The effect a grant or denial of the petition would have on the public interest.

(e) If the suspension, restriction or remedial action imposed by the National Futures Association in a member responsibility action is effective at the time a petition for a stay is filed with the Commission, the Commission shall not delay its decision on the petition to await the receipt of the National Futures Association's response. If the action is not effective at the time the petition is filed, the Commission will not act upon the petition prior to the receipt of a response from the National Futures Association unless, in its view, expedited action on the petition is necessary to protect petitioner's right to a meaningful determination of the right to a stay. If the Commission grants the petition prior to the receipt of the response of the National Futures Association, the association may seek reconsideration of the Commission's action within seven days of service of the decision.

(f) *Proceedings following Commission disposition.* If the petition for a stay is denied, the National Futures Association shall continue its action in accordance with the applicable rules of the association. If the petition for a stay is granted, the action shall be remanded to the National Futures Association for further proceedings as provided in the Commission's decision. Unless otherwise ordered by the Commission, a stay issued pursuant to this section shall not deprive the National Futures Association of the authority, after conducting a hearing under the appropriate rules of the association, to make the suspension, restriction or remedial action ordered in the member responsibility action immediately effective at the time a final decision is issued.

§ 171.42 Notice of a final decision of the National Futures Association in a member responsibility action.

(a) *When required.* The National Futures Association shall promptly serve all parties, as well as the Proceedings Clerk and Secretary of the Commission, with a written notice of any final decision in a member responsibility action. The notice may be contained in the written decision issued by the National Futures Association. If the National Futures Association determines that the decision shall be

effective upon issuance, in addition to serving a written notice, it shall also contact the parties and the Proceedings Clerk by telephone to inform them of its determination.

(b) *Contents of the written notice.* At a minimum, the notice shall provide the following information:

(1) The name of the parties to the proceeding;

(2) The date the notice was served and the effective date of the decision;

(3) A statement informing the parties of their right to appeal the decision to the Commission pursuant to § 171.44 as well as their right to seek a stay of the decision pending Commission consideration of their appeal pursuant to § 171.43;

(4) A description of the action taken and the reasons for the action;

(5) Findings of fact and conclusions of law on all issues relevant to its decision;

(6) A determination of the appropriate relief based on the findings and conclusions.

§ 171.43 Petition for a stay of the effective date of a final decision of the National Futures Association in a member responsibility action.

(a) *Filing the petition.* Within ten days of the service of the notice described in § 171.42, an aggrieved party may seek from the Commission a stay of the effective date of the decision of the National Futures Association pending consideration of the merits of an appeal by filing and serving an appropriate petition. The mere filing of such a petition shall not stay the effective date of the decision. The burden of persuasion shall rest with the party seeking the stay.

(b) *Contents.* A petition for a stay shall be in writing. Material factual allegations shall be supported by an affidavit or other sworn statement unless the parties stipulate that the material facts are not in dispute.

(c) *Response.* Within five days of the service of the petition, the National Futures Association may file an opposition to the petition. Material factual allegations shall be supported by an affidavit or other sworn statement unless the parties stipulate that the material facts are not in dispute.

(d) *Standards for determining petitions for a stay.* In reviewing petitions filed under this section, the Commission shall consider:

(1) The likelihood that petitioner's challenge to the merits of the decision will be successful; and

(2) The likelihood that the denial of the petition would result in irreparable harm to the petitioner; and

(3) The effect a grant of the petition would have on the National Futures Association; and

(4) The effect a grant or denial of the petition would have on the public interest.

(e) *Expedited consideration.* If the suspension, restriction or remedial action imposed by the National Futures Association in a member responsibility action is effective at the time a petition for a stay is filed with the Commission, the Commission shall not delay its decision on the petition to await the receipt of the National Futures Association's response. If the decision is not effective at the time the petition is filed, the Commission will not act upon the petition prior to the receipt of a response from the National Futures Association unless, in its view, expedited action on the petition is necessary to protect petitioner's right to a meaningful determination of the right to a stay. If the Commission grants the petition prior to the receipt of the response of the National Futures Association, the association may seek reconsideration of the Commission's action within seven days of service of the decision.

§ 171.44 Notice of appeal.

(a) *Time to file.* Any party aggrieved by a final decision of the National Futures Association in a member responsibility action may, within thirty days of the service of the notice described in § 171.42, file with the Proceedings Clerk and serve on the National Futures Association a notice of appeal. The filing of such a notice shall not stay the effective date of the decision.

(b) *Contents.* The notice of appeal shall meet the content requirements of § 171.23(b).

(c) *Filing Fee.* Each notice of appeal must be accompanied by a nonrefundable filing fee of \$100. This amount may be paid by check, bank draft or money order, payable to the Commodity Futures Trading Commission.

(d) *Defective notices of appeal.* Notices of appeal that are untimely or not accompanied by the filing fee shall not be accepted by the Proceedings Clerk absent a showing, by motion, of excusable neglect.

§ 171.45 General procedures.

The following procedural rules applicable to review of decisions of the National Futures Association in disciplinary, membership denial and registration actions shall also apply to the review of decisions of the National

Futures Association in member responsibility actions:

- (a) Section 171.24 Submission of the Record.
- (b) Section 171.25. Appeal Brief.
- (c) Section 171.26 Answering Brief.
- (d) Section 171.27 Limited Participation By Interested Persons.
- (e) Section 171.28 Participation By Commission Staff.
- (f) Section 171.30 Scope of Review.
- (g) Section 171.31 Commission Review in the Absence of An Appeal.
- (h) Section 171.32 Oral Argument.
- (i) Section 171.33 Final Decision By the Commission.

§ 171.46 Standards of review.

In reviewing the decision of the National Futures Association in a member responsibility action, the Commission shall consider whether:

- (a) The proceedings were conducted in a manner consistent with fundamental fairness;
- (b) The proceedings were conducted in a manner consistent with the rules of the National Futures Association;
- (c) The weight of the evidence supports the findings of the National Futures Association concerning the reasons for the action;
- (d) The determination that summary action is necessary to protect the commodity futures markets, customers, or members of the National Futures Association rests on a reasonable interpretation of the NFA rules at issue;
- (e) The National Futures Association's application of its rules is consistent with the purposes of the Act;
- (f) In light of the findings of the National Futures Association concerning the reasons for the action and the public interest, the suspension, restriction or remedial action imposed by the National Futures Association is not excessive, oppressive or an abuse of discretion.

Subpart E—Delegation of Functions

§ 171.50 Delegation to the Chief of the Opinions Section.

(a) The Commission hereby delegates, until it orders otherwise, to the Chief of the Opinions Section, or the Chief's designee, the authority:

- (1) To waive or modify any of the requirements of §§ 171.25, 171.26, 171.27 and to waive or modify any requirement of the part 171 rules insofar as it pertains to changes in the time permitted for filing, or the form, execution, service and filing of documents;
- (2) To enter orders under §§ 171.10, 171.12, 171.21 and 171.31(c);
- (3) To decline to accept any notice of appeal, or petition for stay pending review, of matters specified in § 171.1(b)

and to so notify the appellant and the registered futures association;

(4) To stay the effective date of a decision of the National Futures Association in a disciplinary, membership denial or registration action, or a decision relating to such actions issued by the Commission pursuant to these rules, for a reasonable period of time, not to exceed 10 days, when such a stay is necessary to allow the Commission to consider a petition to stay the effective date of such a decision or a motion for similar relief;

(5) To decline to accept any document which has not been filed or perfected as specified in these rules;

(6) To determine motions seeking permission to participate in a proceeding under § 171.27 and to establish the related briefing schedule;

(7) To establish briefing schedules under § 171.28; and

(8) To enter any order which, in his judgment, will facilitate or expedite Commission review of a decision by the National Futures Association in a disciplinary, membership denial or registration action.

(b) Within seven days after service of a ruling issued pursuant to paragraph (a) of this section, a party may file with the Proceedings Clerk a petition for Commission reconsideration of the ruling. Unless the Commission orders otherwise, the filing of a petition for reconsideration will not operate to stay the effective date of such ruling.

(c) The Chief of the Opinions Section may submit to the Commission for its consideration any matter which has been delegated pursuant to paragraph (a) of this section.

(d) Nothing in this section will be deemed to prohibit the Commission, at its election, from exercising the authority delegated to the Chief of the Opinions Section under this section.

Issued in Washington, DC, on Wednesday, June 6, 1990.

Jean A. Webb,

Secretary of the Commission, Commodity Futures Trading Commission.

[FR Doc. 90-13879 Filed 6-14-90; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1 90-085]

Safety Zone: East Passage, Lower Narragansett Bay, Newport, RI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish a temporary safety zone on Saturday, August 25, 1990 in the East Passage of lower Narragansett Bay. This temporary Safety Zone will only be in effect while the "J Class" Yachts participate in the J Class Regatta off Newport, Rhode Island. The zone is needed to protect the public and participants from inherent safety hazards associated with "J Class" Yachts racing in the area. Entry into the safety zones is prohibited unless authorized by the Captain of the Port, Providence, Rhode Island.

DATES: Comments must be received on or before July 25, 1990.

ADDRESSES: Comments should be mailed to Captain of the Port, U.S. Coast Guard Marine Safety Office, John O. Pastore Fed. Bldg., Providence, RI 02903-1790. The comments and other materials referenced in this notice will be available for inspection and copying at the above address. Normal office hours are between 8 a.m. and 4 p.m. Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant S.S. Graham, USCG, c/o Captain Of The Port, U.S. Coast Guard Marine Safety Office, John O. Pastore Fed. Bldg., Providence, RI 02903-1790, telephone (401) 528-5335.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice by (CGD1 90-019), the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are Lieutenant S.S. Graham, project officer for the Captain of the Port, and Lieutenant R.E. Korroch, project attorney, for the First Coast Guard District Legal Office.

Discussion of Proposed Regulations

On Saturday, August 25, 1990 the Captain of the Port Providence, RI is considering establishing a temporary safety zone in the East Passage of lower Narragansett Bay bounded by a line drawn from Fort Adams Light, Newport, RI to The Dimplings off Bull Point, Jamestown, RI thence along the shoreline to Short Point, Beaver Neck to Castle Hill Light, Newport Neck thence along the shoreline to point of origin at Fort Adams Light. An additional temporary moving safety zone with a 100 yard radius will be established around each of the two participating J Class Yachts while they race. These safety zones are intended to protect the public and the participants from hazards associated with the J Class race.

Entry into this zone will be prohibited unless authorized by the Captain of the Port, Providence, Rhode Island. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-6, and 160.5.

2. Section 165.T01-06 is added to read as follows.

§ 165.T01-06 Safety Zone: East Passage, Lower Narragansett Bay, Newport, RI.

(a) Location: The following are designated safety zones:

(1) *While J Class Yachts are participating in the Regatta:*

(i) A area bounded by a line running from Fort Adams Light, Newport, RI to The Dimplings off Bull Point, Jamestown, RI thence along the shoreline to Shore Point, Beaverneck to Castle Hill Light, Newport Neck thence along shoreline to point of origin.

(ii) A moving safety zone with a 100 yard radius around each of the two J Class Yachts as they race.

(b) *Effective Date.* This regulation becomes effective at 9:30 a.m. on August 25, 1990. It terminates at 1 p.m. August 25, 1990 unless otherwise determined by the Captain of the Port due to local conditions during the race.

(c) *Regulations.* The general regulations governing safety zones contained in § 165.23 apply.

Dated: May 24, 1990.

E. J. Williams, III,

Captain, U.S. Coast Guard, Captain of the Port, Providence, RI.

[FR Doc. 90-13950 Filed 6-14-90; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 5

[Docket No. 900531-0131]

RIN 0651-AA09

Patent Law Foreign Filing Amendments

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office (Office) proposes to amend the rules of practice in patent cases in implement the Patent Law Foreign Filing Amendments Act of 1988, subtitle B of Public Law 100-418. The proposed rules reflect changes made to 35 U.S.C. 184 which specify that a license is not required to file amendments, modifications, and supplements containing additional subject matter to a previously licensed foreign patent application if such amendments, modifications, and supplements do not change the general nature of the invention disclosed in the application in a manner which would require a corresponding United States patent application to be made available for national security inspection under 35 U.S.C. 181. These proposed regulatory changes would be applicable to most existing foreign filing license holders if their patent application did not undergo security inspection under 35 U.S.C. 181. Also, under the proposed rules, a

retroactive foreign filing license may be granted in situations where a proscribed foreign filing occurred through error and without deceptive intent as opposed to the earlier standard of inadvertence.

DATES: Comments must be submitted on or before August 15, 1990. An oral hearing is not scheduled.

ADDRESSES: Address written comments to the Commissioner of Patents and Trademarks, Attention: Mr. T.H. Tubbesing, Special Laws Administration Group, Licensing and Review, Washington, DC 20231. The written comments will be available for public inspection in Crystal Plaza 3, room 11C17, Crystal City, VA.

FOR FURTHER INFORMATION CONTACT:

Mr. T.H. Tubbesing by telephone at (703) 557-4918, or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The proposed rules are intended to implement the Patent Law Foreign Filing Amendments Act of 1988, subtitle B of the Public Law 100-418 (hereinafter the Act), which amended sections 184, 185 and 186 of title 35, United States Code, in order to simplify the procedures for United States inventors filing and prosecuting patent applications in foreign countries. The Office does not propose any rule changes to implement the amendments to 35 U.S.C. 185 or 186 since these changes affect matters outside its jurisdiction.

Section 184 of title 35 is intended to protect United States national security interests by preventing the disclosure of potentially sensitive inventions made in the United States to foreign nationals by the act of filing a patent application in foreign countries. An inventor may not apply for a foreign patent on an invention made in the United States until at least six (6) months after the inventor has filed a United States patent application unless the inventor receives a license from the Office permitting an earlier foreign filing. This six-month period assures the Office the opportunity to screen applications for information the disclosure of which might be detrimental to the national security. Also, section 184, as originally enacted, authorized the Office to grant a retroactive license for an unlicensed foreign filing of a patent application if the foreign filing was inadvertent and if the disclosure of the subject matter in the application would not be detrimental to United States security interests.

The original regulatory implementation of 35 U.S.C. 184 required applicants to obtain a license not only

for the original foreign patent application but also for the filing of almost any information in support of the application thereby creating administrative problems for United States inventors seeking foreign patent protection. For example, foreign patent offices often demand that additional technical data, such as the melting point of a chemical, be added to a patent application. An additional foreign filing license was usually required before the inventor could submit modifications, amendments, or supplements to a previously licensed foreign patent application regardless of how trivial the change might be.

Recognizing the problems involved in obtaining these additional licenses, the Office promulgated rules in 1984 (see § 5.15(a) and 49 FR 13456 (April 4, 1984)) to streamline the licensing procedure. The 1984 rule change provided that an inventor may obtain in applications, the disclosure of the content of which is not potentially detrimental to United States security interests, a license which permitted the foreign filing of modifications, amendments, and supplements without further licensing if such changes were within the scope or character of the originally licensed invention (§ 5.15(a)). The 1984 rule change, however, could not be made retroactive and therefore had no effect on licenses granted under the old system. If an applicant wished to broaden a pre-April 4, 1984, foreign filing license to the scope allowed by § 5.15(a), this involved filing a separate petition under § 5.15(c) in each application.

The present Act clarifies the statutory basis for the current Patent and Trademark Office rules by providing that inventors, in most circumstances, are not required to obtain an additional license to file modifications, amendments, and supplements to their foreign applications for which a foreign filing license has been obtained under § 5.15(a). Unlike the present Office rules, the proposed rules would broaden the scope of most existing licenses provided that the conditions contained in the Act are met.

The Act and these proposed rules also address difficulties associated with attempts to procure a retroactive foreign filing license. Some applicants faced loss of their patent rights due to improper foreign filings even though they believed, in good faith, that a license was not necessary for certain minor changes to their foreign application. Court decisions have held that supplemental information filed abroad was exempt from the license

requirement only when it was recited verbatim in the United States patent application, or was so commonly known that it could have been said to have been expressly disclosed in the United States application. In re Application of Gaertner, 604 F.2d 1348, 202 USPQ 714 (CCPA 1979). If a patent applicant did not obtain a foreign filing license from the Office, any corresponding United States patent was at risk of being held invalid under 35 U.S.C. 185 if technical information was added to the foreign application, even if the technical information was completely unrelated to United States security interests.

Loss of United States patent rights subsequent to an "inadvertent" unlicensed foreign filing could be avoided if a retroactive license was obtained under 35 U.S.C. 184. *Twin Disc, Inc. v. United States*, 10 Cl. Ct. 713, 231 USPQ 417 (Cl. Ct. 1986) and *Minnesota Mining and Manufacturing Co. v. Norton Co.*, 366 F.2d 238, 151 USPQ 1 (6th Cir. 1966), cert. denied, 385 U.S. 1005 (1967). While the *Gaertner* decision defined a broad range of circumstances under which a foreign filing license would be required, other court decisions made correction of licensing errors difficult by setting forth various strict interpretations of the standard of "inadvertence." *Compare Iron Ore Co. of Canada v. Dow Chemical Co.*, 177 USPQ 34 (D. Utah 1972), aff'd, 500 F.2d 189, 182 USPQ 520 (10th Cir. 1974) and *Reese v. Dann*, 391 F. Supp. 12, 185 USPQ 492 (D.D.C. 1975). An inventor could fail to meet the standard of "inadvertence" even if the information disclosed was not significant in nature and did not contain any sensitive national security information. For example, one decision suggested that the filing of information abroad was intentional because the inventor first considered the applicability of § 184. *Shelco, Inc. v. Dow Chemical Co.*, 322 F. Supp. 485, 168 USPQ 395 (N.D. Ill. 1970), aff'd, 466 F.2d 613, 173 USPQ 451 (7th Cir. 1972), cert. denied, 409 U.S. 876 (1972).

Under this standard, if supplemental information had been filed abroad as a considered, willful act, even though done through error in the belief that the information disclosed abroad did not exceed the scope of the disclosure in the United States patent application, the filing would not be "inadvertent"; and, therefore, the subject information could not qualify for a retroactive license.

The Act addresses these problems, and the proposed rules implement the intention of the Act. The Act changes the language of the statute to provide that an inventor may receive a

retroactive license if the inventor can show that the premature filing of a foreign patent application, or the submission of supplemental information in support of a foreign patent application, was made "through error and without deceptive intent." This criterion is equivalent to that for reissue of a patent under 35 U.S.C. 251 to correct errors made without any deceptive intention. The reissue error requirement has been considered by the courts. See, e.g., *In re Weiler*, 790 F.2d 1576, 229 USPQ 673 (Fed. Cir. 1986). The applicant for a retroactive license also must show that the foreign filing did not disclose any information detrimental to the national security and that diligence was exercised in seeking a retroactive license once the applicant became aware of the proscribed foreign filing.

The Act became effective on August 23, 1988 but it does not affect any final decision made by the Office or a court, nor the rights or liabilities of any party under a patent in a case pending before a court on the above date or under any subsequent patent deriving priority rights from such patent under 35 U.S.C. 120 or 121. Therefore, the retroactive effect of the Act and the proposed rules is limited.

The text of the Patent Law Foreign Filing Amendments Act of 1988 in Public Law 100-418 is summarized below for informational purposes:

SUBTITLE B—FOREIGN FILING

§ 9101. Increased Effectiveness of Patent Law.

(a) Short title.—This section may be cited as the "Patent Law Foreign Filing Amendments Act of 1988."

(b) Filing of applications in foreign countries.—(1) Section 184 of title 35, United States Code, is amended—

(A) In the third sentence by—

(i) Striking out "inadvertently"; and

(ii) Inserting "through error and without deceptive intent" after "filed abroad"; and

(B) By adding at the end thereof the following new paragraph:

The scope of a license shall permit subsequent modifications, amendments, and supplements containing additional subject matter if the application upon which the request for the license is based is not, or was not, required to be made available for inspection under section 181 of this title and if such modifications, amendments, and supplements do not change the general nature of the invention in a manner which would require such application to be made available for inspection under such section 181. In any case in which a license is not, or was not, required in order to file an application in any foreign country, such subsequent modifications, amendments, and supplements

may be made, without a license, to the application filed in the foreign country if the United States application was not required to be made available for inspection under section 181 and if such modifications, amendments, and supplements do not, or did not, change the general nature of the invention in a manner which would require the United States application to have been made available for inspection under such section 181.

(2) Section 185 of title 35, United States Code, is amended by inserting immediately before the period in the last sentence the following: ", unless the failure to procure such license was through error and without deceptive intent, and the patent does not disclose subject matter within the scope of section 181 of this title."

(3) Section 186 of title 35, United States Code, is amended by inserting "willfully" after "whoever", the second place it appears.

(c) *Regulations.*—The Commissioner of Patents and Trademarks shall prescribe such regulations as may be necessary to implement the amendments made by this section.

(d) *Effective Date.*—(1) Subject to paragraphs (2), (3), and (4) of this subsection, the amendments made by this section shall apply to all United States patents granted before, on, or after the date of enactment of this section, to all applications for United States patents pending on or filed after such date of enactment, and to all licenses under section 184 granted before, on, or after the date of enactment of this section.

(2) The amendments made by this section shall not affect any final decision made by a court or the Patent and Trademark Office before the date of enactment of this section with respect to a patent or application for patent, if no appeal from such decision is pending and the time for filing an appeal has expired.

(3) No United States patent granted before the date of enactment of this section shall abridge or affect the right of any person or his successors in business who made, purchased, or used, prior to such date of enactment, anything protected by the patent, to continue the use of, or to sell to others to be used or sold, the specific thing so made, purchased, or used, if the patent claims were invalid or otherwise unenforceable on a ground obviated by this section and the person made, purchased, or used the specific thing in reasonable reliance on such invalidity or unenforceability. If a person reasonably relied on such invalidity or unenforceability, the court before which such matter is in question may provide

for the continued manufacture, use, or sale of the thing made, purchased, or used as specified, or for the manufacture, use, or sale of which substantial preparation was made before the date of enactment of this section, and it may also provide for the continued practice of any process practiced, or for the practice of which substantial preparation was made, prior to the date of enactment of this section, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced before such date of enactment.

(4) The amendments made by this section shall not affect the right of any party in any case pending in court on the date of enactment of this section to have its rights or liabilities—

(A) Under any patent before the court, or

(B) Under any patent granted after such date of enactment which related to the patent before the court by deriving priority rights under section 120 or 121 of title 35, United States Code, from a patent or an application for patent common to both patents, determined on the basis of the substantive law in effect before the date of enactment of this section.

For greater clarity of this rule proposal, the revised text of 35 U.S.C. 184 appears below:

Filing of Application in Foreign Country

Except when authorized by a license obtained from the Commissioner a person shall not file or cause or authorize to be filed in any foreign country prior to six months after filing in the United States an application for patent or for the registration of a utility model, industrial design, or model in respect of an invention made in this country. A license shall not be granted with respect to an invention subject to an order issued by the Commissioner pursuant to section 181 of this title without the concurrence of the head of the departments and the chief officers of the agencies who caused the order to be issued. The license may be granted retroactively where an application has been filed abroad through error and without deceptive intent and the application does not disclose an invention within the scope of section 181 of this title.

The term "application" when used in this chapter includes applications and any modifications, amendments, or supplements thereto, or divisions thereof.

The scope of a license shall permit subsequent modifications, amendments, and supplements containing additional subject matter if the application upon which the request for the license is based is not, or was not, required to be made available for inspection under

section 181 of this title and if such modifications, amendments, and supplements do not change the general nature of the invention in a manner which would require such application to be made available for inspection under section 181. In any case in which a license is not, or was not, required in order to file an application in any foreign country, such subsequent modifications, amendments, and supplements may be made, without a license, to the application filed in the foreign country if the United States application was not required to be made available for inspection under section 181 and if such modifications, amendments, and supplements do not, or did not, change the general nature of the invention in a manner which would require the United States application to have been made available for inspection under such section 181.

To implement the Act, the Office proposes to make changes to §§ 5.11 (a) and (e), 5.15 (a)–(c), (e) and (f), and 5.25(a).

The inspection provisions of 35 U.S.C. 181 delegate to the Commissioner of Patents and Trademarks the authority to decide which applications will be forwarded to United States defense agencies for national security inspection when the Government has no property interest in the invention. The fact that an application was forwarded to the defense agencies does not necessarily mean that the application was properly within the inspection scope of 35 U.S.C. 181.

Discussion of Specific Rule Change Proposals

Section 5.11(a), if amended as proposed, would specify when a license is required before filing any foreign application for patent including any modifications, amendments and supplements or divisions thereof. This proposal adopts the statutory definition of "application" in 35 U.S.C. 184. Also, the rule, if further amended as proposed, would clarify that the provisions of this section apply only to inventions made in the United States as stated in section 184. However, where an improvement or modification to a foreign-origin invention is made in the United States, a license would be required for the additional subject matter.

Section 5.11(e), if amended as proposed, would provide that an inventor need not obtain a supplemental license to file modifications, amendments and supplements containing additional subject matter to, or divisions of, a foreign application for which an initial foreign filing license

was not required, so long as the corresponding United States application was not required to be made available for inspection under 35 U.S.C. 181 and § 5.1 and the changes did not alter the general nature of the invention in a manner which would require the United States application to have been made available for inspection under 35 U.S.C. 181 and § 5.1. The need for a supplemental license would depend on whether the changes altered the general nature of the invention, rather than the label applied to the changes, i.e., "Continuation", "Continuation-In-Part", "Division", etc.

Authorized parties may determine whether a particular application was forwarded to the defense agencies for inspection under 35 U.S.C. 181 either by reviewing the filing receipt to determine if a license is or was granted, in which case security inspection did not occur, or by reviewing the file wrapper to determine if an access acknowledgment under 35 U.S.C. 181 is present, in which case security inspection did occur. If verification of the security inspection status of an application is needed, the authorized parties may submit a written request therefor to the Office directed to the attention of Licensing and Review. A written response from the Office will be issued. In the event Office records are not available, a *de novo* determination by the Office will be made of the need for defense agency inspection under the present national security standards. If security inspection was not required under 35 U.S.C. 181, then the provisions of the Act will convert a previously granted or implied license into one having the scope of proposed § 5.15(a).

Section 5.15(a), if amended as proposed, would adopt the specific provisions of the Act and clarify the existing rules by expressly stating that the license provisions of the paragraph are applicable to United States applications which were not required to be made available for inspection under 35 U.S.C. 181 and § 5.1. Thus, if an application was not required to be inspected but was inspected by mistake, it would be eligible for such a license. The proposed changes to the regulation would expressly apply to modifications, amendments, and supplements to a previously licensed foreign application, and divisions thereof, provided the changes do not alter general nature of the invention in a manner which would require a corresponding United States application to have been made available for inspection under 35 U.S.C. 181. The language of § 5.15(a)(1) also has been clarified. If the filing of the foreign application was pursuant to a license

granted under § 5.15 and issued prior to publication of the notice at 49 FR 13456 (April 4, 1984) for subject matter which was not appropriate for inspection under 35 U.S.C. 181, the license is now expanded to cover amendments, modifications, and supplements thereto, or divisions thereof, which do not change the general nature of the invention in a manner which would require such application to be made available for security inspection under 35 U.S.C. 181. Also, paragraphs (a)(3) and (a)(4) of § 5.15 would be merged in order to more clearly define the type of subsequent changes to a previously licensed foreign patent application which may be filed without any additional license. In particular, it is made clear that these changes must not be such as to require the application to be made available for security inspection. Any questions about the security inspection status of any application or amendments, modifications, and supplements thereto or divisions thereof will be handled in the manner as described above.

Section 5.15(b), if amended as proposed, would clarify the existing rule by expressly stating that the license provisions of § 5.12(b) are applicable to United States applications which were required to be made available for inspection under 35 U.S.C. 181 and § 5.1. The proposed amendments also would clarify the language of the paragraph and indicate that the more restrictive license under this paragraph includes authority to take actions in the foreign or international application, provided subject matter additional to that covered by the license is not involved. Section 5.15(c), if amended as proposed, would clarify the existing rule by expressly stating that the granting of a § 5.15(a) scope to a license under § 5.15(b) and conversion provisions of this paragraph are only applicable to material submitted under § 5.13 or United States applications, which are not, or were not, required to be made available for inspection under 35 U.S.C. 181 and § 5.1.

Sections 5.15(e) and (f), if amended as proposed, would substitute a reference to § 5.15(a)(3) rather than to § 5.15(a)(4) which is proposed to be eliminated as a separate paragraph. Paragraph (e) also is proposed to be amended to state that changes to the general nature of the invention, which would require the application to have been made available for inspection under 35 U.S.C. 181 and § 5.1, require a separate license.

Section 5.25(a), if amended as proposed, would provide that the inventor may receive a retroactive license if the inventor can show that the

premature filing of papers in a foreign patent office was made through error and without deception intent. This criterion is the same as the for "error without any deceptive intention" for reissue of a patent and replaces the previous standard of inadvertence. This section would also be amended to clarify that each country in which a proscribed filing occurred must be listed in a petition for retroactive license. Also, the rule would be amended to define a verified statement as being in the form of either an oath or a declaration. Finally, the rule would be clarified by defining the period over which error without deceptive intent must be shown as being the time leading up to and including the proscribed foreign filing.

Other Considerations

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Acting Chief Counsel for Advocacy, Small Business Administration, that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)) because the proposed rules simplify the procedures for all United States inventors who file and prosecute applications in foreign countries.

The Patent and Trademark Office has determined that this proposed rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than \$100 million. There will be no major increase in costs or prices for consumers, individuals, industries, Federal, state or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Patent and Trademark Office has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

These proposed rules contain a collection of information requirement subject to the Paperwork Reduction Act which has previously been approved by

the Office of Management and Budget under Control No. 0651-0011 with an expiration date of March 31, 1993. The average time for each petition for license under § 5.12(b) or § 5.25 is estimated to be approximately thirty (30) minutes, including time for reviewing instructions, gathering and maintaining data needed, and completing and reviewing the petition submission. Send comments regarding this burden estimate to the Patent and Trademark Office, Office of Management and Organization, Washington, DC 20231, and the Office of Management and Budget, Washington, DC 20503 (Attention: Paperwork Reduction Project 0651-0011).

List of Subjects in 37 CFR Part 5

Classified information, Exports, Foreign relations, Inventions and patents.

For the reasons set forth in the preamble, 37 CFR part 5 is proposed to be amended as set forth below. Additions are indicated by arrows (> <) and deletions by brackets ([]).

PART 5—SECURITY OF CERTAIN INVENTIONS AND LICENSES TO EXPORT AND FILE APPLICATIONS IN FOREIGN COUNTRIES

1. The authority citation for part 5 is proposed to be amended to read as follows:

Authority: 35 U.S.C. 6, 41, 181-188, > as amended by the Patent Law Foreign Filing Amendments Act of 1988, (Pub. L. 100-418), 102 Stat. 1567; < the Export Administration Act of 1979, as amended, 50 U.S.C. App. 2401 *et seq.*, the Arms Export Control Act, as amended, 22 U.S.C. 2751 *et seq.*, the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*, and the Nuclear Non-Proliferation Act of 1978, 22 U.S.C. 3201 *et seq.*, and the delegations in the regulations under these acts to the Commissioner (15 CFR 370.10(j), 22 CFR 125.04, and 10 CFR 810.7).

2. Section 5.11, paragraphs (a) and (e), are proposed to be revised to read as follows:

§ 5.11 License for filing in a foreign country an application on an invention made in the United States or for transmitting an international application.

(a) A license from the Commissioner of Patents and Trademarks under 35 U.S.C. 184 is required before filing any application for patent > including any modifications, amendments, or supplements thereto or divisions thereof < or for the registration of a utility model, industrial design, or model, in a foreign patent office or any foreign patent agency or any international agency other than the

United States Receiving Office, if > the invention was made in the United States and <:

- (1) An application on the invention has been on file in the United States less than six months prior to the date on which the application is to be filed, or
- (2) No application on the invention has been filed in the United States.

(e) No license pursuant to paragraph (a) of this section is required [if]:

- (1) > If the < [The] invention was not made in the United States, or
- (2) > If the corresponding < [The] United States application is not subject to a secrecy order under § 5.2, and was filed at least six months prior to the date on which the application is filed in a foreign country[.]>, or
- (3) If the corresponding United States application was not required to be made available for inspection under 35 U.S.C. 181 and § 5.1, for subsequent modifications, amendments, and supplements containing additional subject matter to, or divisions of, a foreign patent application for which a license is not, or was not, required under paragraph (e)(2) of this section, provided such modifications, amendments, and supplements do not, or did not, change the general nature of the invention in a manner which would require any corresponding United States application to be or have been made available for inspection under 35 U.S.C. 181 and § 5.1 <

Section 5.15, paragraphs (a), (b), (c), (e) and (f), are proposed to be revised to read as follows:

§ 5.15 Scope of license.

(a) > Applications or other materials reviewed pursuant to §§ 5.12 through 5.14, which were not required to be made available for inspection by defense agencies under 35 U.S.C. 181 and § 5.1, will be eligible for a license of the scope provided in this paragraph. This license permits subsequent modifications, amendments, and supplements containing additional subject matter to, or divisions of, a foreign patent application, if such changes to the application do not alter the general nature of the invention in a manner which would require the United States application to have been made available for inspection under 35 U.S.C. 181 and § 5.1. This license also covers the inventions disclosed in foreign applications which had been granted a license under this part prior to April 4, 1984, and which were not subject to security inspection under 35 U.S.C. 181 and § 5.1 < Grant of > this < [a] license

[under § 5.12(a)] authorizes the export and filing of an application in a foreign country or the transmitting of an international application to any foreign patent agency or international patent agency when the subject matter of the foreign or international application corresponds to that of the domestic application. This license includes authority > <:

(1) To export and file all duplicate and formal > application < papers > in < [to the] foreign > countries < [country] or > with < international agencies;

(2) To make amendments, modifications, and supplements, including divisions, changes or supporting matter consisting of the illustration, exemplification, comparison, or explanation of subject matter disclosed in the application; > and <

(3) To take any action in the prosecution of the foreign or international application > provided that the adding of < [; and (4) To add] subject matter or > taking of < [take] any action under paragraphs (a) (1) > and (2) < [through (3)] of this section [which] does not change the general nature of the [subject matter disclosed at the time of filing, unless the subject matter added involves] > invention disclosed in the application in a manner which would require such application to have been made available for inspection under 35 U.S.C. 181 and § 5.1 by including < technical data pertaining to:

(i) Defense services or articles designated in the United States Munitions List applicable at the time of foreign filing, the unlicensed exportation of which is prohibited pursuant to the Arms Export Control Act, as amended, and 22 CFR Parts 121 through 130; or

(ii) Restricted Data, sensitive nuclear technology or technology useful in the production or utilization of special nuclear material or atomic energy, the dissemination of which is subject to restrictions of the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978, as implemented by the regulations for Unclassified Activities in Foreign Atomic Energy Programs, 10 CFR Part 810, in effect at the time of foreign filing.

(b) > Applications or other materials which were required to be made available for inspection under 35 U.S.C. 181 and § 5.1 will be eligible for a license of the scope provided in this paragraph. < Grant of > this < [a] license [under § 5.12(b)] authorizes the export and filing of an application in a foreign country or the transmitting of an international application to any foreign patent agency or international patent

agency. Further, this license includes authority to >export and file< [forward] all duplicate and formal papers >in foreign countries< [to the foreign patent agency] or >with foreign and< international patent >agencies< [agency] and to make amendments, modifications, >and< [or] supplements to >, file divisions of, < and take any action in the prosecution of the foreign or international application, provided subject matter additional to that covered by the license is not involved.

(c) A license granted under § 5.12(b) pursuant to § 5.13 or § 5.14 shall have the scope indicated in paragraph (a) of this section, if it is so specified in the license. A petition, accompanied by the required fee (§ 1.17(h)), may also be filed to change a license having the scope indicated in paragraph (b) of this section to a license having the scope indicated in paragraph (a) of this section. >No such petition will be granted if the copy of the material filed pursuant to § 5.13 or any corresponding United States application was required to be made available for inspection under 35 U.S.C. 181 and § 5.11. < The change in the scope of a license will be >effective< as of the date of the grant of the >petition< [change in scope].

(e) Any paper filed abroad or transmitted to an international patent agency following the filing of a foreign or international application which changes the general nature of the subject matter disclosed at the time of filing >in a manner which would require such application to have been made available for inspection under 35 U.S.C. 181 and § 5.1< or which involves the disclosure of subject matter listed in paragraphs (a)[4] >3< (i) or (ii) of this section must be separately licensed in the same manner as a foreign or international application. Further, if no license has been granted under § 5.12(a) on filing the corresponding United States application, any paper filed abroad or with an international patent agency which involves the disclosure of additional subject matter must be licensed in the same manner as a foreign or international application.

(f) Licenses separately granted in connection with two or more United States applications may be exercised by combining or dividing the disclosures, as desired, provided:

(1) Subject matter which changes the general nature of the subject matter disclosed at the time of filing or which involves subject matter listed in paragraphs (a)[4] >(3)< (i) or (ii) of this section is not introduced and,

(2) In the case where at least one of the licenses was obtained under § 5.12(b), additional subject matter is not introduced.

4. Section 5.25, paragraph (a), is proposed to be revised to read as follows:

§ 5.25 Petition for retroactive license.

(a) A petition >for a< [of] retroactive license under 35 U.S.C. 184 shall be presented in accordance with § 5.13 or § 5.14 >(a)<, and shall include:

(1) A listing >of each< of the foreign countries in which the >unlicensed< patent application material was filed,

(2) The dates on which the material was filed >in each country<.

(3) A verified statement >(oath or declaration)< containing:

(i) An averment that the subject matter in question was not under a secrecy order at the time it was filed abroad, and that it is not currently under a secrecy order,

(ii) A showing that the license has been diligently sought after discovery of the proscribed foreign filing, and

(iii) An explanation of why the material was [inadvertently] filed abroad >through error and without deceptive intent< without the required license under § 5.11 first having been obtained, and

(4) The required fee (§ 1.17(h)).

The above explanation must include a showing of facts rather than a mere allegation of >action through error and without deceptive intent< [inadvertence]. The showing of facts >as to the nature of the error< should include statements by those persons having personal knowledge of the acts regarding filing in a foreign country and should be accompanied by copies of any necessary supporting documents such as letters of transmittal or instructions for filing. The acts which are alleged to constitute >error without deceptive intent< [inadvertence] should cover the period >leading up to and including each of the proscribed foreign filings< [from the time of filing until actual filing of the petition under this section].

Dated: May 16, 1990.

Harry F. Manbeck, Jr.,
Assistant Secretary and Commissioner of
Patents and Trademarks.

[FR Doc. 90-13872 Filed 6-14-90; 8:45 am]

BILLING CODE 3510-16-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 308

[Docket No. R-132]

RIN 2133-AA83

War Risk Insurance; Foreign-Flag Vessel Types, Application Procedure and Fees; Correction

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of Proposed Rulemaking; Correction.

SUMMARY: The Maritime Administration (MARAD) is correcting an error in the preamble of this proposed rule which appeared in the Federal Register on June 6, 1990 (55 FR 23103).

FOR FURTHER INFORMATION CONTACT: Edmond J. Fitzgerald, Director, Office of Trade Analysis and Insurance, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590, or telephone (202) 366-2400.

SUPPLEMENTARY INFORMATION: MARAD published a notice of proposed rulemaking in the Federal Register on June 6, 1990 (55 FR 23103), that proposed to amend its war risk insurance regulations at 46 CFR part 308. The principal amendments would expand foreign-flag vessel eligibility for war risk insurance interim binders and impose a fee for each application for war risk insurance, rather than for each vessel for which an application is filed. In describing the proposed amendments in the preamble of the notice, MARAD inadvertently dropped part of a sentence at 55 FR 23104, in the penultimate paragraph of the second column.

The second sentence of that paragraph reads, "Such laws may prevent U.S. citizens or U.S. available to the U.S. Government during periods of national emergency." That sentence is revised to read as follows: "Such laws may prevent U.S. citizens or U.S. operators of foreign-flag vessels from making those vessels available to the U.S. Government during periods of U.S. national emergency."

Dated: June 11, 1990.

James E. Saari,
Secretary.

[FR Doc. 90-13890 Filed 6-14-90; 8:45 am]

BILLING CODE 4910-81-M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1510 and 1552

[FRL-3787-4]

Acquisition Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the EPA Acquisition Regulation (EPAAR) coverage on the submission of contractor information required in monthly progress reports and invoices. This proposed rule affects the preparation of contractor monthly progress reports and invoices. Under this rule, EPA contractors would be required to include cumulative information in monthly progress reports showing total amounts obligated, total costs claimed and remaining available funds for a contract; to identify separately major cost elements on invoices without grouping separate cost elements together; and to differentiate between prime and subcontractor costs on invoices. The intended effect of this action is to enable EPA and its contractors to perform financial monitoring of contractor performance more effectively.

DATES: Written comments on this proposed rule must be received on or before August 14, 1990.

ADDRESSES: Comments should be addressed to Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, attn: Paul Schaffer.

FOR FURTHER INFORMATION CONTACT: Paul Schaffer at (202) 382-5032 (FTS 382-5032).

SUPPLEMENTARY INFORMATION:

A. Background

Many contractors with cost-reimbursement term form contracts that authorize work by individual work assignments, or with indefinite delivery/indefinite quantity contracts that authorize work by individual delivery orders, report and invoice for costs only at the delivery order or work assignment level. By requiring contractors to include summary information on total obligated amounts, total costs claimed, and available funding remaining under a contract, the EPA and its contractors will perform financial monitoring of contracts more effectively.

This rule will require contractors to identify clearly on invoices separate charges for major cost elements such as travel, equipment, subcontractors, and consultants. Some contractors presently

group cost elements such as these together as "other direct costs". It is difficult in these cases for EPA to identify and monitor major cost elements, which may have ceiling amounts in their contracts.

This rule will require contractors to differentiate between prime and subcontractor costs on invoices. Some contractors presently do not distinguish prime and subcontractor costs for certain cost elements, making financial monitoring of contract performance difficult.

The information requested under this rule represents only the minimal information necessary for monthly progress reports and invoices, and does not preclude additional reporting requirements in Superfund contracts as specified and negotiated under individual solicitations and contracts to assist in cost recovery.

B. Executive Order 12291

OMB Bulletin No. 85-7, dated December 14, 1984, establishes the requirements for the Office of Management and Budget (OMB) review of agency procurement regulations. This regulation does not fall within any of the categories cited in the Bulletin requiring OMB review.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 1039.

Public reporting burden for this collection of information is estimated to vary from one (1) to three (3) hours per response, with an average of one and one-half (1.5) hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Regulatory Flexibility Act

This rule is not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The information requested for submission to the Government is readily available and will require a minimal effort for contractors to comply. The rule has three purposes: to include cumulative information on monthly progress reports showing total amounts obligated, total costs claimed, and remaining available funds for a contract; to identify separately major cost elements on invoices without grouping separate cost elements together; and to differentiate among prime and subcontractor costs on contractor invoices. Most small entities should presently be compiling this information in their accounting systems in order to monitor financial progress under a contract. Any adjustments to existing accounting systems should require only minimal cost and effort. The EPA certifies that this rule will not exert a significant impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been proposed.

Comments on the rationale for this certification are invited.

List of Subjects in 48 CFR Parts 1510 and 1552

Government procurement, Specifications, standards, and other purchase descriptions, solicitation provisions, Contract clauses.

For the reasons set out in the preamble, chapter 15 of title 48 Code of Federal Regulations is proposed to be amended as set forth below:

1. The authority citation for parts 1510 and 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Section 1510.011-73 is revised to read as follows:

1510.011-73 Monthly progress report—time and materials or labor hour contract.

Contracting Officers shall insert the clause at 1552.210-73 in all time and materials or labor hour contracts for services with a period of performance of six months or longer. The clause may also be used in these contract types when the period of performance is less than six months.

1510.011-75 through 1510.11-78
[Redesignated from 1510.74 through 1510.77]

3. Sections 1510.011-74 through 1510.011-77 are redesignated as sections

1510.011-75 through 1510.011-78 respectively, and a new section 1510.011-74 is added to read as follows:

1510.011-74 Monthly progress report—Indefinite delivery/indefinite quantity fixed-rate services contract.

Contracting Officers shall insert the clause at 1552.210-74 in all indefinite delivery/indefinite quantity contracts for services with a period of performance of six months or longer. The clause may also be used in this contract type when the performance period is less than six months.

4. In section 1552.210-72, the introductory paragraph is revised, paragraphs (a)(1) through (a)(4) are redesignated as paragraphs (a)(2) through (a)(5), a new paragraph (a)(1) is added, and the first sentence of (a)(2) is revised to read as follows:

1552.210-72 Monthly progress report—Cost type contract.

As prescribed in 1510.011-72, insert the following clause:

Monthly Progress Report—Cost Type Contract (XXX 1990)

* * *

(a) * * *

(1) Cumulative totals for the contract amounts obligated, amounts claimed, and remaining available funds. Available funds are defined as the total obligated amount less total amounts claimed.

(2) Cumulative labor hours and dollars, broken out by prime and subcontractor labor category, expended from the effective date of the contract through the last day of the current reporting month. * * *

5. Section 1552.210-73, is revised to read as follows:

1552.210-73 Monthly progress report—time and materials or labor hour contract.

As prescribed in 1510.011-73, insert the following clause:

Monthly Progress Report—Time and Materials or Labor Hour Contract (XXX 1990)

(a) The contractor shall furnish _____ copies of a combined monthly technical and financial progress report briefly stating the progress made, including the number of hours expended during the reporting period and cumulatively, and the percentage of the project work remaining. Specific discussions shall include difficulties encountered and remedial action taken during the reporting period and anticipated activity during the subsequent reporting period.

(b) The report shall include the following financial information:

(1) Cumulative totals for the contract amounts obligated, amounts claimed, and remaining available funds. Available funds

are defined as the total obligated amount less total amount claimed;

(2) Cumulative labor hours and dollars, broken out by prime and subcontractor labor category, expended from the effective date of the contract through the last day of the current reporting period;

(3) Actual costs and labor hours expended during the current month;

(4) Estimated costs and labor hours to be expended during the next reporting period.

(c) The reports shall be submitted to the following addressees on or before the _____ of each month following the first complete calendar month of the contract. Distribute reports as follows:

No. of copies	Addressee
_____	Project Officer
_____	Contracting Officer

(End of Clause)

6. Sections 1552.210-74 through 1552.210-77 are redesignated as sections 1552.210-75 through 1552.210-78 respectively, and a new section 1552.210-74 is added to read as follows:

1552.210-74 Monthly Progress Report—Indefinite Delivery/Indefinite Quantity Fixed-Rate Services Contract.

As prescribed in 1510.011-74, insert the following clause:

Monthly Progress Report—Indefinite Delivery/Indefinite Quantity Fixed-Rate Services Contract (XXX 1990)

(a) The Contractor shall furnish _____ copies of a combined monthly technical and financial progress report briefly stating the progress made, including the percentage of the work ordered and completed during the reporting period. Specific discussions shall include difficulties encountered and remedial action taken during the reporting period and anticipated activity during the subsequent reporting period.

(b) The report shall include the following financial information for each delivery order:

(1) Delivery order number, date and title;

(2) EPA client organization;

(3) Period of performance, including explanations for any extensions that may be needed;

(4) Number of hours, loaded rate applied, and corresponding total dollar amount expended for each employee (by name) within all labor categories employed during the reporting period;

(5) Cumulative number of hours and corresponding dollar amounts expended to date by labor category;

(6) Cumulative listing of all invoices submitted including invoice number, date submitted, period of invoice, total amount of invoice, and amount paid;

(7) Any accumulated charges that have not

been invoiced and reasons why they have not been billed;

(8) Estimated costs and labor hours to be expended during the next reporting period.

(c) The reports shall be submitted to the following addresses on or before the _____ of each month following the first complete calendar month of the contract. Distribute reports as follows:

No. of copies	Addresses
_____	Project Officer
_____	Contracting Officer

(End of Clause)

* * *

7. Section 1552.232-70 is amended by redesignating paragraph (b) as (b)(1), adding new paragraph (b)(2), redesignating paragraph (c) as (c)(1), adding new paragraph (c)(2), and revising the third sentence of (d) to read as follows:

1552.232-70 Submission of Invoices.

* * *

(b) * * *

(2) The invoice for a cost-reimbursement contract shall include current and cumulative charges by major cost element such as direct labor, overhead, travel, equipment, and other direct costs. The charges for subcontracts shall be further detailed in a supporting schedule showing the major cost elements for each subcontract.

(c) * * *

(2) The invoice for an indefinite delivery/indefinite quantity contract shall indicate charges by major categories such as labor, travel, equipment, subcontracts, and consultants. The charges for subcontracts shall be further detailed in a supporting schedule showing the major cost elements for each subcontract.

(d) * * * If contract work is ordered through individual work assignments or delivery orders, invoices must show current and cumulative charges by work assignment or delivery order number and EPA accounting information (separate invoices shall be submitted for each delivery order).

* * *

Dated: May 30, 1990.

John C. Chamberlin,

Director, Office of Administration.

[FR Doc. 90-13664 Filed 6-14-90; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90-09; Notice 01]

RIN 2127-AC55

Federal Motor Vehicle Safety Standards: Brake Hoses

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend Standard 106, *Brake Hoses*, so that Table III of the standard would expressly apply to rubber brake hoses only, and thus would not apply to hoses made from thermoplastic materials (e.g., polyamide nylon). Table III establishes dimensional requirements for air brake hoses intended for use with reusable end fittings. NHTSA believes these requirements are inappropriate for brake hoses made from thermoplastic materials, also known as plastic tubing, or, simply, tubing. This proposal is intended to facilitate the manufacture of new sizes of tubing, and reusable end fittings for such tubing. It responds to a petition for rulemaking from Volvo White Truck Corporation.

DATES: Comment closing date: July 30, 1990. Proposed effective date: July 16, 1990.

ADDRESSES: Comments should refer to the docket number and notice number and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC, 20590. Telephone: (202) 366-5267. Docket hours are 9:30 am. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Vernon Bloom, NRM-11, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC, 20590. Telephone: (202) 366-5277.

SUPPLEMENTARY INFORMATION: This notice proposes to amend the language in Standard 106 that requires hoses used with reusable end fittings to conform to the dimensional requirements of Table III. The language would be amended so that Table III would expressly apply to brake hoses made from synthetic or natural elastomeric rubber only, and thus would not apply to hoses made from thermoplastic materials, such as polyamide nylon. The latter types of brake hose, usually referred to as

"plastic tubing" rather than "hose," are manufactured under industry specifications that ensure that all tubing of a given inside diameter has the same outside diameter. Table III was adopted to distinguish between two types of rubber brake hose, one of which has a larger outside diameter than the other for a given inside diameter. Since these differences in sizing do not occur in brake hoses made from plastic tubing, the agency tentatively concludes that there is no reason for Table III to apply to plastic tubing. To the extent that Table III has operated to restrict the use of plastic tubing for brake hoses, the proposal should facilitate the use of such tubing. This action responds to a petition for rulemaking from Volvo White Truck Corporation (Volvo).

Background

To provide a context for discussion of the Volvo petition, it is necessary to discuss two aspects of Standard 106 that appear to have been the source of uncertainty among brake hose manufacturers and users.

The first aspect concerns the applicability of the standard to "plastic tubing," as well as to types of rubber brake hoses. Standard 106 defines a "brake hose" as "a flexible conduit, other than a vacuum tubing connector, manufactured for use in a brake system to transmit or contain the fluid pressure or vacuum used to apply force to a vehicle's brakes." (S4) The definition does not distinguish between traditional rubber hose and plastic tubing. Based on this definition, there should be no question but that plastic tubing used as a brake hose must meet the performance requirements for brake hoses in Standard 106. In practice, this does not seem to have been an issue of consequence, since the agency's compliance test experience with plastic tubing shows a high rate of compliance with the performance requirements of the standard.

The second aspect concerns the dimensional requirements for brake hose that is intended to be used with reusable end fittings. Here, the status of plastic tubing has been less certain.

On the one hand, paragraph S7.1 of the standard requires "[e]ach air brake hose" intended for use with a reusable end fitting to "conform to the dimensional requirements specified in Table III." Table III sets forth dimensions for the inside diameters (I.D.) and outside diameters (O.D.) for eight sizes of air brake hose. No other sizes are permitted for hoses intended for use with reusable end fittings. Hose with O.D.'s within a specified range are considered "Type I" hose and marked "AI" (S7.2.1(e)). Hose with generally

slightly larger O.D.'s are considered "Type II" hose and marked "AII." The Type I and Type II hose dimensions describe two types of rubber hose that were prevalent in the marketplace during the development of Standard 106. NHTSA has stated that "Table III * * * is intended to be a first step toward standardization of reusable fittings and hose * * *" (39 FR 24012, 24014; June 28, 1974). Further, there is nothing in S7.1 itself to contradict the view that Table III applies to plastic tubing used with reusable fittings as well as to rubber hose.

On the other hand, other provisions in S7 refer to "plastic tubing" in a manner that has led some brake hose manufacturers to ask whether tubing was intended to be covered by Table III. S7.2.1(d), for example, refers to "the nominal inside diameter of hose * * * or the nominal outside diameter of plastic tubing * * *," as if hose and tubing were different entities for purposes of labeling.

The purpose of standardizing hose for use with reusable end fittings is to reduce the likelihood of mismatch problems between hoses and end fittings. In issuing Table III, NHTSA noted that reusable fittings and hose are typically assembled by repair businesses in the field, where the agency thought mismatch was more likely to occur than in high volume operations. (*Id.*) The AI and AII marking on the hose are intended to help assembly manufacturers distinguish between two types of hoses that may be labeled the same size, yet have slightly different dimensions. Identifying the hose is important for purposes of selecting the appropriate end fitting for them. Reusable end fittings are marked AI or AII indicating their suitability for use with Type I or Type II hose (S7.2.2(c)).

In its original petition, Volvo asked the agency to amend the definition of "permanently attached end fitting" to include a new type of end fitting it had developed for use with plastic tubing. Since Table III applies only to hose for use with reusable end fittings, the effect of adopting the new definition would be to enable Volvo to use its new end fittings with plastic tubing without regard to Table III. Subsequent discussions with Volvo, as documented in the record for this notice (a memorandum dated August 17, 1989 describing a conversation between Vernon Bloom of NHTSA and Jim Lawrence of Volvo has been placed in the docket for this notice), have made it clear that either of two results would accomplish Volvo's goal: the amendment of the definition of

"permanently attached end fitting," as originally requested, or the amendment of S7.1 to make it clear that plastic tubing used with replaceable end fittings is not subject to Table III. For the reasons set forth below, the agency is proposing the latter amendment.

"Permanently Attached End Fitting"

Standard 106 defines a "permanently attached end fitting" as "an end fitting that is attached by deformation of the fitting about the hose by crimping or swaging, or an end fitting that is attached by use of a sacrificial sleeve or ferrule that requires replacement each time a hose assembly is rebuilt." (S4) The standard does not define the term "reusable end fitting," but NHTSA has long considered end fittings that do not fall into the "permanently attached" category to be "reusable."

Volvo's end fitting attaches to a hose by deformation of the hose about the fitting, and not by crimping or swaging (which generally require deformation of the fitting about the hose) or using a sacrificial sleeve or ferrule. Volvo informed NHTSA that it believed that, since its end fitting would not permanently attach to a hose in the manner described in S4's definition of a permanently attached end fitting, the fitting would be considered reusable. Volvo petitioned NHTSA to amend the "permanently attached end fitting" definition to read as follows: "Permanently attached end fitting" means an end fitting that is attached by permanent deformation of the hose or fitting or fitting components."

Under Volvo's suggested definition, reusable end fittings that cause deformation of the hose when the fitting is attached may or may not be "permanently attached," depending on whether such deformation is "permanent." NHTSA believes that it would be difficult in some cases to determine whether there is the requisite permanent deformation of the hose; hence, it is likely that Volvo's suggested definition would often lead to uncertainty as to whether fitting designs were "permanently attached."

Further, it appears that Volvo's fitting would, in fact, be reusable, whatever the definition in the standard. Although the fitting consists of two major components, which cannot be separated once they are joined, the fitting can be easily removed from one hose by cutting the hose and thereupon inserted into another hose. Volvo's fitting appears capable of being reused after removal from an assembly without having to replace any of the fitting components. In the agency's view, defining "permanently attached end fitting" to

include such a fitting would irreparably distort the definition. The agency therefore declines to accept the first of the alternate remedies sought by Volvo.

Limiting Table III

The agency has previously explored the issue of the applicability of Table III restrictions to tubing. In a 1985 advance notice of proposed rulemaking (ANPRM) relating to tensile strength requirements for 1/2 inch and smaller tubing, NHTSA asked whether there is air brake tubing that does not conform to Table III. (50 FR 11209; March 20, 1985.)

Notwithstanding S7.1 of Standard 106, one commenter stated its understanding that the table standardized only sizes of reusable rubber hose, and not plastic tubing.

NHTSA has tentatively concluded that Table III need not apply to tubing intended for use with reusable end fittings. As noted above, the purpose of the dimensional restrictions is to reduce the likelihood of mismatch problems between hoses and fittings, where the hoses appear identical (and are labeled the same size) yet have different O.D.'s. The only hoses exhibiting this variation are those made from rubber. There does not seem to be a comparable risk of mismatch for plastic tubing since the tubing manufacturers have voluntarily standardized on size designations. An assembler would readily know the O.D. of brake tubing from the labeling on the tubing, and would also know which fitting would be appropriate for the tubing.

The agency's compliance tests of assemblies using plastic tubing with permanently attached end fittings indicates that such tubing is capable of meeting the performance requirements of the standard. Judging from the comment to the 1985 ANPRM and other information to the same effect in other rulemaking petitions, it appears that brake tubing in sizes not specified in Table III is presently being used with reusable end fittings in braking applications. NHTSA is not aware of information showing that dimensional variations have negatively affected the safety of such tubing.

The agency is therefore proposing to amend S7.1 so that Table III would expressly apply to brake hose "constructed of synthetic or natural elastomeric rubber" only, and thus Table III would not apply to hose made of polyamide nylon or other thermoplastic materials. Comment is requested as to whether the term "synthetic or elastomeric rubber" is sufficiently precise to define the class of hose material whose size variation makes Table III necessary.

This notice relates to tubing only, and does not propose to change the application of Table III to rubber hose. NHTSA believes rubber hose for use with reusable end fittings should continue to be labeled Type I and Type II since the risk of an assembler misidentifying a hose is still present when the two slightly-dissimilar types of hoses are available for use. Nonetheless, the agency is interested in learning about any apparent problems rubber brake hose manufacturers are having in their efforts to comply with S7.1 and Table III.

Impact Analyses

NHTSA has concluded that this proposal does not qualify as a "major rule" within the meaning of Executive Order 12291, and that this proposal is not "significant" within the meaning of the Department of Transportation's regulatory procedures. NHTSA has further determined that the effects of this rulemaking are minor and that preparation of a full preliminary regulatory evaluation is not warranted. If adopted, the amendment would clarify the requirements applicable to the manufacture and use of certain sizes of reusable air brake tubing and end fittings for such tubing. Manufacturers of tubing, end fittings and assemblies may benefit by the amendment, since they might be encouraged to produce new products. However, the agency does not anticipate that they would be significantly affected. The need for assemblies in sizes other than those listed in Table III is already at least partially being met by assemblies using permanently attached brake hose end fittings.

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. If adopted, the amendment would facilitate the manufacture and sale of new types of brake hose end fittings and assemblies. Any brake hose end fitting or assembly manufacturer that might qualify as small entity under the Regulatory Flexibility Act could benefit slightly by the proposed amendment due to the clarification of the applicability of the size restrictions of Table III and the possible effect of that amendment on sales of new products. However, the agency does not believe the amendment would result in significant cost impacts for manufacturers since reusable assemblies apparently already are being produced with different sizes of tubing. The agency believes there would not be

a significant impact on the cost of vehicles, and that small organizations and governmental jurisdictions that purchase motor vehicles would not be significantly affected by the proposed amendment.

Environmental effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Comments

NHTSA solicits public comments on this notice. It is requested, but not required, that commenters provide 10 copies of written comments and two copies of films, tapes, and other materials.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in

regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Regulatory Information Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.106 [Amended]

2. Paragraph S7.1 of Standard No. 106 would be revised to read as follows:

S7.1 Construction. Each air brake hose assembly shall be equipped with permanently attached brake hose end fittings or reusable brake hose end fittings. Each air brake hose constructed of synthetic or natural elastomeric rubber intended for use with reusable end fittings shall conform to the dimensional requirements specified in Table III.

Issued on June 8, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-13953 Filed 6-14-90; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 571

[Docket No. 90-10; Notice 1]

RIN 2127-AD36

Federal Motor Vehicle Safety Standard Pneumatic Tires—Bead Unseating Tire Dimensions

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to implement the petition by the Rubber Manufacturers Association requesting that NHTSA amend Standard No. 109, *New Pneumatic Tires—Passenger Cars*, to permit the testing of 17 and 18 inch T-Type temporary tires. Currently, the dimensions set forth in Figure 1 related to bead unseating do not permit tires of this size.

DATES: Comment closing date: Comments on this notice must be received on or before July 30, 1990. Proposed effective date: If adopted, these amendments would be effective July 16, 1990.

ADDRESSES: All comments on this notice should refer to Docket No. 90-10; Notice 1 and be submitted to the following: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours 9:30 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cook, Office of Crash Avoidance, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-366-4803).

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 109, *New Pneumatic Tires* (49 CFR 571.109), contains several performance requirements and tests related to pneumatic tires. Section S4.2.2.3 specifies force levels that a pneumatic tire must withstand before the tire bead is unseated. For a tire that has a maximum inflation pressure other than 60 psi, the force levels are related to the tire's designated section width. (S4.2.2.3.1). For a tire that has a maximum inflation pressure of 60 psi (i.e., a T-Type temporary spare tire), the force levels required to unseat the bead are determined by the tire's maximum load rating (S4.2.2.3.2).

Section S5.2 sets forth test procedures related to the bead unseating resistance requirements. In preparation for the test, one must wash, dry, and inflate the tire to be tested to one of the inflation pressures specified in Table II of the

standard. Then, after mounting the wheel and tire in a fixture described in Figure 1 of the standard, one must apply a load at not less than four places equally spaced around the tire's circumference through a testing block until the bead unseats or the specified value is reached.

Figure 1 specifies dimensions of the bead unseating fixture for the "wheel size" and "dimension A for tires with maximum inflation pressure."

Dimension A is a subsection of the bead unseating fixture from the center of the mounted wheel and tire combination to the point at which the test anvil contacts the tire at the beginning of the bead unseating test. The point of contact is the maximum section width of a properly inflated tire. The permissible wheel sizes currently are 10 inches to 17 inches.

The Rubber Manufacturers Association petitioned the agency to amend the dimensions in the bead unseating fixture in Figure 1. It requested that in Figure 1, the standard include 10.6 inch dimension A for 17 inch tires and 11.4 inch dimension A for 18 inch tires having maximum inflation pressure of 60 lb/in². The petition stated that new dimension A's are required for 17 and 18 inch T-Type tires which have been standardized by the Tire and Rim Association.

After reviewing the petition, the agency has decided to grant the petition and to issue this notice of proposed rulemaking to amend Standard No. 109. The agency tentatively concludes that it would be appropriate to adopt these amendments to Figure 1 in Standard No. 109 and permit testing of 17 and 18 inch T Type tires for bead unseating. When the agency amended Standard No. 109 to permit T-Type tires, only tires that were 13 inches to 16 inches in diameter were anticipated. (44 FR 12869, March 7, 1977). Therefore, Figure 1 requires testing of tires on wheels that are these sizes.

The proposal would facilitate the introduction of 17 and 18 inch T-Type tires. The agency notes that the "A values" in Figure 1 were uniformly derived from a formula which added a constant value of 1.9 inches after the wheel size was divided by two. Applying this formula to the proposed 17 and 18 inch tires would result in values of 10.4 inches for 17 inch wheels and 10.9 inches for 18 inch wheels. In contrast, RMA recommended values of 10.6 inches and 11.4 inches, stating that these larger values would allow all tires to be tested without having the test anvil come into contact with the rim during a bead unseating test. The agency has decided to propose these

larger values, which the agency tentatively believes would better allow for the testing of 17 and 18 inch T-Type tires. Nevertheless, the agency invites comments about whether it should amend the wheel sizes in Figure 1 and whether the proposed values are appropriate.

Section 103(c) of the Vehicle Safety Act requires that each order shall take effect no sooner than 180 days from the date the order is issued unless "good cause" is shown that an earlier effective date is in the public interest. Given that this amendment would facilitate the introduction of certain tires without imposing additional requirements on manufacturers and that the public interest would be served by not delaying the introduction of these alternative tire designs, the agency has determined that there is good cause to propose an effective date 30 days after publication of the final rule.

NHTSA has evaluated this proposal to amend the dimensions in Figure 1 of Standard No. 109 and has found that its effect would be to impose no mandatory costs on manufacturers. This amendment would merely permit manufacturers to introduce T-Type tires of larger dimensions. For those manufacturers, the costs would be minimal. Accordingly, the agency has determined that the proposal is not "major" within the meaning of Executive Order 12291 and is not "significant" for purposes of Department of Transportation regulatory policies and procedures. It would not have an impact on the economy in excess of \$100 million. Similarly, it would not result in a major change in costs or prices for consumers, individual industries, government, or any geographic region. Nor would this action significantly affect competition. The agency has further determined that the costs associated with this proposal would be so minimal as not to warrant preparation of a regulatory evaluation under the procedures.

For the same reasons just discussed, I certify under the Regulatory Flexibility Act that this rule would not have a significant impact on a substantial number of small entities within the meaning of the statute.

Further, NHTSA has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that it has not Federalism implication that warrants preparation of a Federalism report.

Finally, the agency has concluded that the environmental consequences of the proposed change would be of such limited scope that they clearly would

not have a significant effect on the quality of the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation.

49 CFR Part 512

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 would be amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403 and 1407; delegation of authority at 49 CFR 1.50.

§ 571.109 [Amended]

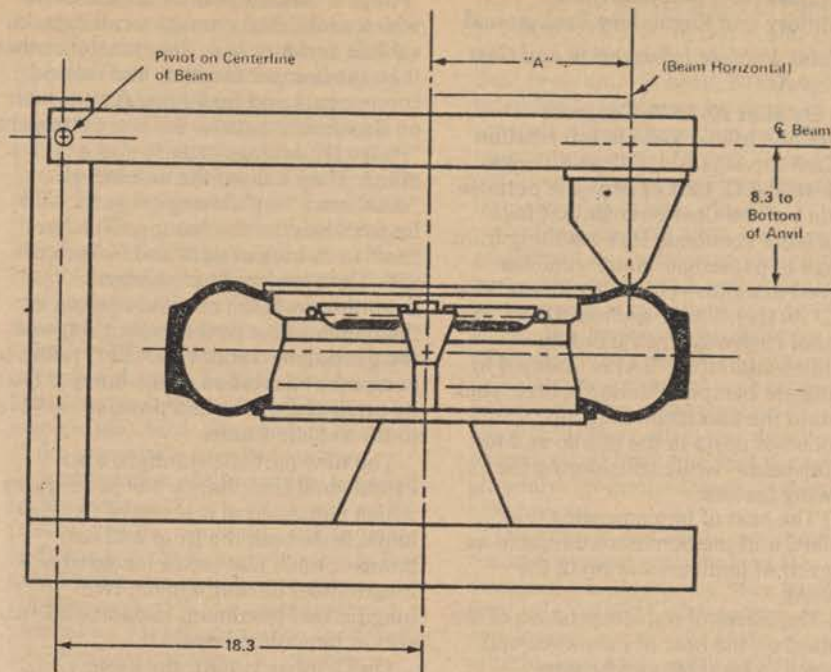
2. Figure 1 of § 571.109 would be revised to appear as follows:

Issued on June 8, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

BILLING CODE 4910-59-M



Wheel Size	Dimension "A" for tires with maximum inflation pressure	
	Other than 60 lb/in ²	60 lb/in ²
18	....	11.40
17	12.00	10.60
16	11.50	9.90
15	11.00	9.40
14	10.50	8.90
13	10.00	8.40
12	9.50	....
11	9.00	....
10	8.50	....
320 mm	8.50	....
340 mm	9.00	....
345 mm	9.25	....
365 mm	9.75	....
370 mm	10.00	....
390 mm	11.00	....
415 mm	11.50	....
400 mm(1)	10.25	....
425 mm(1)	10.75	....
450 mm(1)	11.25	....
475 mm(1)	11.75	....
500 mm(1)	12.25	....

(1) for CT tires only

Figure 1—Bead Unseating Fixture—Dimensions in Inches

49 CFR Part 581

[Docket No. 73-19; Notice 35]

RIN 2127-AC29

Bumper Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition by Consumers Union requesting that the bumper standard be amended to require front and rear bumpers on passenger vehicles to withstand impacts of 5.0 mph and bumper corners to withstand impacts of 2.5 mph without any damage to safety related parts and with only minimal damage to the bumper itself. NHTSA notes that the public and consumers obtain the maximum feasible reduction of costs (including the cost of the new bumper) with the current bumper standard, which requires front and rear bumpers on passenger vehicles to withstand impacts of 2.5 mph (and corner impacts of 1.5 mph) and allows damage to the bumper system provided no safety-related parts are damaged. This notice also denies the petitioner's alternative request for the agency to obtain and disseminate consumer information related to bumper systems because the agency could not find a consistent positive correlation between damage induced in laboratory bumper tests and insurance accident repair costs and because premium rates are not influenced to any great degree by vehicle damage susceptibility. In particular, agency data indicate that specific components, such as bumpers, do not significantly affect the premium costs of auto insurance. Thus, the information specified in the petition would not enable the agency to provide prospective purchasers of passenger vehicles with useful rankings. In addition, implementing this request would require an unwarranted expenditure of the agency's limited resources and would place an unreasonable burden on passenger vehicle manufacturers, importers, and insurers.

FOR FURTHER INFORMATION CONTACT: Mr. Nelson Gordy, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington DC 20590. Telephone: (202) 366-4797.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background
A. Motor Vehicle Information and Cost Savings Act

On October 20, 1972, Congress enacted the Motor Vehicle Information and Cost Savings Act. ("Cost Savings Act"), 15 U.S.C. 1901 *et seq.* The purpose of Title I of the Cost Savings Act is to "reduce the economic loss resulting from damage to passenger motor vehicles involved in motor vehicle accidents." 15 U.S.C. 1911(a). Under section 102(a), the National Highway Traffic Safety Administration (NHTSA) is directed to promulgate bumper standards that "seek to obtain the maximum feasible reduction of costs to the public and to the consumer" while considering the following factors:

- (A) The cost of implementing the standard and the benefits attainable as the result of implementation of the standard;
- (B) The effect of implementation of the standard on the cost of insurance and prospective legal fees and costs;
- (C) Savings in terms of consumer time and inconvenience; and
- (D) Considerations of health and safety, including emission standards." 15 U.S.C. 1912(b)(1).

Title II of the Cost Savings Act sets forth requirements related to the collection and dissemination of insurance information related to accident claim data concerning the type, extent, and cost of physical damage resulting from passenger vehicle accidents. Title II will be considered in detail later in this notice.

Since the Cost Savings Act was enacted in 1972, the agency has continually sought to have a bumper standard that would best "obtain the maximum feasible reduction of costs to the public and to the consumer" while considering the other factors in section 102(b).

B. NHTSA Regulatory Activities

On March 4, 1976, NHTSA established part 581 which combined the safety features of the existing bumper standard, Federal Motor Vehicle Safety Standard (FMVSS) 215 with new damage resistance criteria by which the agency intended to promote consumer cost savings. (41 FR 9346) The existing criteria in FMVSS 215 required a 5.0 mph perpendicular front and rear pendulum impact resistance and a 3.0 mph corner front and rear pendulum impact resistance. "Impact resistance" refers to a bumper's ability to protect against certain types of damage in an impact of a given speed. The new Part 581 standard added damage criteria in two stages. The first stage, known as

"Phase I," added new damage criteria which prohibited damage to all exterior vehicle surfaces (e.g., sheet metal), other than the bumper face bar and related components and fasteners. A year later on September 1, 1979, the more stringent "Phase II" damage criteria came into effect. They limited the amount of "dent" and "set" damage which could be sustained by the bumper face bar itself to $\frac{3}{8}$ inch of dent and $\frac{3}{4}$ inch of set. "Dent" refers to permanent deviation from the original contour of the bumper face or the impact ridge of the pendulum test device. "Set" refers to permanent deviation of the bumper from its original contour and position relative to the vehicle frame.

The new part 581 standard also established compliance test procedures which consisted of a series of five test impacts on both the front and rear bumper. Each test series included one longitudinal barrier impact, two longitudinal pendulum impacts and two corner pendulum impacts.

On October 1, 1981, the agency published a notice of proposed rulemaking (NPRM) seeking comments on nine alternatives for amending the bumper standard in order to better satisfy the mandate of the Cost Savings Act. (46 FR 48262) The factors about which the agency sought comments included test impact levels for front and rear bumpers ranging from no requirement to 7.5 mph, the use of longitudinal and corner impact tests, and the need for the Phase I and Phase II damage criteria. The agency also published for public comment a Preliminary Regulatory Impact Analysis (PRIA) (Docket 73-19, Notice 27, No. 011) which incorporated all of the agency's earlier evaluations and assessments and provided estimates related to the costs and benefits of each alternative.

After reviewing the public comments submitted in response to the October 1981 NPRM, the PRIA, and comments presented at two public meetings, NHTSA formulated a final rule amending part 581 and a Final Regulatory Impact Analysis (FRIA) (Docket 73-19, Notice 29, No. 001) supporting the final rule. The final rule was published May 20, 1982 (47 FR 21820) and became effective on July 6, 1982. The final rule amended the bumper standard to require the 2.5 mph/2.5 mph Phase I alternative, which is still in effect. This alternative requires a 2.5 mph front and rear longitudinal barrier and pendulum testing impact resistance (and a 1.5 mph impact resistance for corner bumper impacts) for testing compliance and Phase I damage

resistance criteria. Thus, this amendment reduced both the impact resistance speeds from 5.0 mph to 2.5 mph for front and rear bumpers (and from 3.0 mph to 1.5 mph for corner impacts) and the damage resistance criteria from Phase II to Phase I. The agency concluded that the 2.5 mph/2.5 mph Phase I alternative best satisfies the statutory criterion that the bumper standard "seek to obtain the maximum feasible reduction of costs to the public and to the consumer" and would not adversely affect motor vehicle safety.

In the FRIA, the agency estimated the expected changes in costs and benefits likely to result from amending the bumper standard. The primary measure of the standard's benefit was the economic value of the damage avoided by the bumper. This was calculated by considering the frequency and severity of damage to the bumper system in low speed collisions and the projected effectiveness of the bumper system in preventing damage based on the results of vehicle owner surveys, insurance company claim files, and engineering analysis. The agency also considered the benefits from reduced insurance costs through savings in administrative expense and the savings in consumer time and inconvenience by damage avoidance.

The agency measured the costs of the bumper standard based on the increase in new car prices attributable to the bumper system. This cost consists of both the cost of the bumper itself as well as the cost of "secondary weight," i.e., the weight added as a result of upgrading other vehicle components necessary to accommodate the additional weight of more damage resistant bumpers. The FRIA also calculated the added operating cost (e.g., fuel costs) of driving a car with a heavier bumper system.

Based on these and other benefits and cost factors, NHTSA concluded that the 2.5 mph/2.5 mph Phase I alternative best maximizes net benefits to the consumer and the public related to a bumper system. In addition, the agency concluded that this alternative to the standard would not adversely affect motor vehicle safety.

When NHTSA published the Final Rule, the agency also published a notice announcing its intent to initiate two programs to assure that consumers would obtain cost savings through cost-beneficial bumper systems. (May 20, 1982, 47 FR 21819). The agency intended that these programs would further the statutory objectives in the Cost Savings Act and the National Traffic and Motor Vehicle Safety Act ("Vehicle Safety Act") First, NHTSA intended to evaluate

the extent of actual levels of bumper protection offered by particular bumper systems through the "Agency Bumper Test Program." Second, NHTSA intended to implement a program through which separate rulemaking proceedings might further amend Part 581 to establish alternative standards for particular vehicle classes.

On December 20, 1982, the agency reaffirmed its decision to amend the bumper standard in a notice denying petitions for reconsideration, 47 FR 56640. The Insurance Institute for Highway Safety (IIHS) and several private citizens sought in those petitions to have the May 1982 final rule rescinded. The petitioners disputed the agency's authority to adopt the new standard, its methodology, and its conclusions.

The agency denied the petitions for reconsideration and retained the standard adopted in the May 20, 1982 final rule. NHTSA restated its conclusion that in light of the statutory criteria, the previous 5.0 mph/5.0 mph standard provided "significantly less net benefit to the public and consumers than would several of the proposed alternatives with less stringent performance requirements." 47 FR at 21825. Further, the agency's data indicated that there was no difference in overall net benefits between the 5.0 mph/2.5 mph Phase II bumper standard and the 2.5 mph/2.5 Phase I bumper standard. Accordingly, NHTSA concluded that the Cost Savings Act required that that agency eliminate the 5.0 mph test impacts and Phase II requirements.

NHTSA reaffirmed its conclusion that the 2.5 mph/2.5 bumper standard alternative should be adopted because it best serves the agency's understanding of the Congressional intent in enacting the statute in the first place. It would result in the fewest known costs to achieve essentially the same expected net benefit, would allow manufacturers the greatest design freedom in attaining the same net benefit, and avoid a differential front and rear standard which would increase design costs and affect the amount of damage inflicted.

Petitions for judicial review of the agency's decision were filed by the Center for Auto Safety, State Farm Mutual Automobile Insurance Company and Allstate Insurance Companies. The United States Court of Appeals for the District of Columbia Circuit upheld NHTSA's decision, noting that the Cost Savings Act requires the agency to implement a bumper standard, not a particular bumper system, which minimizes the costs for consumers and the public. *Center for Auto Safety v. Peck*, 751 F.2d 1336, 1370 (D.C. Cir. 1985).

Based on the previously mentioned Notice of Intent (May 20, 1982, 47 FR 21819), NHTSA developed and used a low-cost, repeatable test procedure to measure the protective capabilities of bumpers. The agency tested late model vehicles and compared the dollar value of bumper damage between the laboratory tests and actual on road damage.

On December 6, 1985, the Insurance Institute for Highway Safety (IIHS) and the Motor Vehicle Manufacturers Association (MVMA) held a workshop in Detroit at which NHTSA presented a paper entitled "Consumer Information Program on Bumpers—Analysis of Laboratory Test Data and Insurance Claims Data of Selected 1983 and 1984 Model Automobiles" ("1985 NHTSA Bumper Study," Docket 73-19, Notice 30). This paper discussed the data sources, methodology, and results of a series of analyses which were performed to assess the relationship between laboratory bumper crash test data on 23 vehicles and real world insurance claim repair data from low speed bumper-involved, front and rear accidents. Commenters at the Workshop noted that most passenger vehicles have bumper systems that exceed the minimum performance requirements in the bumper standard which became effective in July 1982. The commenters also discussed the practicability of a real world accident repair cost data base and the types of bumper information that consumers desire. On January 10, 1986 NHTSA published a notice describing the NHTSA paper in Docket 73-19, Notice 30 and sought comments on it. (51 FR 1321).

II. Consumers Union Petition

On April 7, 1986, Consumers Union of United States, Inc. (CU) petitioned NHTSA to restore the bumper standard requirements to the level in effect before the 1982 final rule: the 5.0 mph front and rear bumper impact resistance, 3.0 mph corner impact resistance, and the Phase II damageability requirements. In the alternative, CU's petition requested the agency to require automotive dealers to disclose information for passenger cars based on 5.0 mph bumper performance tests. This information would consist of a numerical ranking for each passenger car model and estimates concerning the repair cost for damage in the 5.0 mph tests and insurance renewal premium surcharges related to those repair costs.

CU referred to various studies and other information to support its petitions to reinstate the 5.0 mph bumper standard and Phase II damage criteria. For instance, the petitioner provided

data based on tests which it conducted with a device that simulates a collision between two cars. The data compared the damage to bumper systems that adhered to the amended standard with bumpers that met the pre-1982 standard. After subjecting the front and rear bumpers to 5.0 mph impacts on the bumper face and 3.0 mph impacts on the bumper corners, CU estimated that the costs needed to repair the damage ranged from \$146 to \$1081 more for bumpers on passenger vehicles manufactured under the 2.5/2.5 mph standard.

CU also cited studies by the Highway Loss Data Institute (HLDI) which, according to the petitioner, revealed that the frequency of claims increased dramatically for automobiles with bumpers adhering to the post-1982 standard compared to bumpers adhering to the pre-1982 standard. CU also contended that this study indicated that the post-1982 bumpers had a higher average loss payment per insured vehicle than bumpers adhering to the pre-1982 5.0 mph amended standard. The petitioner acknowledged that there are no data addressing the incidence of front and rear bumper impacts between 2.5 mph and 5.0 mph and corner bumper impacts between 1.5 mph and 3.0 mph.

After an extensive review of the CU petition, studies provided in support of that petition, and NHTSA studies, especially a comprehensive 1987 study entitled "An Evaluation of the Bumper Standard as Modified in 1982" (See Report No. HS 805-072, Docket No. 73-19-N34-001, 52 FR 6281, March 2, 1987), NHTSA has decided to deny CU's request that the agency amend the bumper standard and its alternative request for consumer information regarding repair costs and insurance premiums.

III. CU Request to Amend Bumper Standard

NHTSA bases its denial of the request to amend the bumper standard, in large part, on its extensive study of the benefits and costs to consumers of the modified bumper standard. (52 FR 6281, March 2, 1987). The agency further notes that in response to a recent inquiry, manufacturers indicated that for the 1990 model year, 64 percent of the passenger cars sold would comply with the 5 mph Phase I criteria. A small portion, 13 percent, would comply with the current 2.5 mph standard and the remaining 23 percent would comply with the 5.0 m.p.h., Phase II criteria.

The 1987 study, which explores many of the same issues raised by CU in its petition, sought to determine the actual costs, benefits, and cost effectiveness of

bumper systems installed after the modification of the 1982 amended bumper standard. The study was made in response to Executive Order 12291, which requires government wide review of major Federal regulations. The study compared the collision damage experience and bumper system costs of post-1982 passenger vehicles (i.e., 1983 and 1984 models) to bumpers on pre-amendment passenger vehicles (i.e., 1981 and 1982 models). Among the conclusions of the 1987 agency study were that the net costs to consumers have not changed as result of the modification of the standard from 5.0 mph impact resistance to 2.5 mph impact resistance, and that the changed standard has not affected the protection of safety related parts. Accordingly, the agency determined that the modified 2.5 mph bumper standard best satisfies the Cost Savings Act's mandate to "obtain the maximum feasible reduction of costs to the public and consumer," while considering the other statutory factors.

Six entities commented on the 1987 study. Ford and General Motors supported the agency's determination that a 2.5 mph minimum bumper standard best effectuates title I of the Cost Savings Act. On the other hand, State Farm Insurance Companies (State Farm), the Insurance Institute for Highway Safety (IIHS), and two private individuals disagreed with the agency's findings. Both State Farm and IIHS provided detailed comments criticizing the agency's methodology and conclusions.

NHTSA conducted an extensive review of the issues raised in these comments, and its findings have been placed in the public docket (73-19-N34). In particular, these matters are addressed in a document entitled "A Summary and Discussion of Docket Comments on the Evaluation of the Bumper Standard—As Modified in 1982" (73-19-N34-009) and in a letter to Congressmen Dingell and Luken. (73-19-N34-011).

NHTSA also reviewed data provided by CU derived from tests which it conducted with a device that simulates a collision between two cars. The data compared the damage to bumper systems that complied with the amended standard with bumpers that met the pre-1982 standard. After subjecting the front and rear bumpers to 5.0 mph impacts on the bumper face and 3.0 mph impacts on the bumper corners, CU estimated that the costs needed to repair the damage ranged from \$146 to \$1081 more for bumpers on passenger vehicles manufactured under the 2.5/2.5 mph standard.

NHTSA disputes the worth and accuracy of this study offered in support of CU's petition. The agency believes that the CU test results are of limited value because its study considers only repair costs and fails to consider the initial and replacement bumper costs. Both types of costs are necessary for the agency to calculate the aggregate net costs and benefits as required by the Cost Savings Act. Moreover, the CU study fails to consider the probability and frequency of collisions between 2.5 mph and 5.0 mph. The relative benefits of 2.5 mph versus 5.0 mph bumpers cannot be determined without considering such information.

CU also cited studies by the Highway Loss Data Institute (HLDI) which, according to the petitioner, revealed that the frequency of claims increased dramatically for automobiles with bumpers adhering to the post-1982 standard compared to bumpers adhering to the pre-1982 standard. CU also contended that this study indicated that the post-1982 bumpers had a higher average loss payment per insured vehicle than bumpers adhering to the pre-1982 5.0 mph amended standard. The petitioner acknowledged that there are no data addressing the incidence of front and rear bumper impacts between 2.5 mph and 5.0 mph and corner bumper impacts between 1.5 mph and 3.0 mph.

NHTSA believes that the HLDI data are unpersuasive for the following reasons. First, they are based on less than ten passenger vehicle models rather than a representative sampling of the entire fleet of vehicles. Second, even if this limited sampling were sufficient for a valid study, the HLDI data revealed that any increase in the number of insurance claims for passenger vehicles with changed bumpers is offset by reduced average repair costs per claim. Thus, a careful review of this limited study further confirms the agency's finding that when benefits from the 2.5 mph bumper standard are considered, the net effect of the modified bumper standard is to have a small increase in repair costs offset by the reduction in the bumper system's lifetime costs.

The bumper standard is intended to reduce property damage associated with low speed accidents. However, HLDI considers several types of accident data that are more closely related to higher speed accidents. For instance, HLDI considers only collision claims, which are primarily frontal damage accidents representing more single vehicle and higher speed cases. That study omits all lower-speed property damage claims, which more often involve rear end

damage with lower collision speeds. Accordingly, HLDI should not have combined collision and property damage liability claims which include tow-away collisions because they typically represent more extensive bumper damage situations caused by accidents at higher speeds and resulting in greater related costs. The HLDI study also underestimates the proportion of rear collisions and does not contain descriptive information explaining whether a bumper was involved in an accident and whether a bumper reasonably could be expected to prevent damage. Further, HLDI considers accidents involving personal injury to a vehicle occupant or accidents requiring a vehicle to be towed after an accident. These are two accident situations that typically involve relatively high speed collisions. Since the bumper standard is not designed to prevent damage in such situations, much of the HLDI study data could not be used to screen out these nonpertinent situations.

Based on NHTSA's extensive study of the effect of the modified bumper standard and careful analysis of comments criticizing NHTSA's study, the agency has decided to deny the portion of CU's petition requesting the agency to raise the bumper standard to the levels of impact resistance and damageability in effect before the 1982 amendment. NHTSA concludes that the petition provides no basis for changing its earlier conclusion that the current standard best effectuates the Cost Savings Act's mandate to provide for the "maximum feasible reduction of costs to the public and to the consumer" in connection with the other specified factors.

IV. Alternative CU Request for Consumer Information on Repair Costs and Insurance Premiums

As mentioned earlier, Title II of the Cost Savings Act sets forth requirements related to the collection and dissemination of insurance information related to passenger vehicle accidents. Section 205(b) requires an insurer, upon request by this agency, to provide claim data concerning the type, extent, and cost of repairing physical damage as well as personal injuries as related to the make, model, and year of the passenger motor vehicles. Section 205(e) further requires that an insurer of passenger motor vehicles must, upon request by this agency, furnish information concerning the relationship between insurance rates and the damage susceptibility, crashworthiness, and the cost of damage repair and personal injury. This information must

specify the passenger vehicle's make, model, and year.

Part 582, *Insurance Cost Information Regulation*, sets forth the general framework of a requirement for automobile dealers to make available to prospective purchasers information reflecting differences in insurance costs for different makes and models of passenger motor vehicles based on differences in damage susceptibility and crashworthiness. The purpose of this part is to enable prospective purchasers to compare differences in insurance costs for various makes and models of passenger motor vehicles based upon differences in damage susceptibility and crashworthiness, and to realize any savings in collision insurance resulting from differences in damageability and any savings in medical payment insurance resulting from differences in crashworthiness.

However, dealers are not actually required to take any action by part 582 since it does not yet specify the particular insurance cost information to be provided by them. The incompleteness of part 582 is due to problems related to the development of a reliable means by which manufacturers may acquire the insurance information. One problem is that insurance premiums are based on prior model year performance and thus are not prospective in nature.

From June 1974 through January 1976, NHTSA looked into the possibility of having a low-cost, insurance-based consumer information program on damage susceptibility, but this effort proved to be unsuccessful. That analysis of insurance rate structures concluded that " * * * premium rates are not influenced to any great degree by vehicle damage susceptibility or safety characteristics. Although it may be economically logical that a degree of cost savings (via premium reduction) could be applied to those vehicles having superior characteristics, the current premium structure would minimize the effect of those vehicle related characteristics since premiums are primarily influenced by driver and geographical factors in addition to the price of the car." [Development of Vehicle Rating Systems for Automobile Consumer Information Study, General Electric Co., March 1976, DOT-HS-4-00903.]

On June 16, 1977, NHTSA then proposed a consumer information program related to bumper damageability, in conjunction with the Part 581 compliance testing, as an alternative to the Phase II damageability requirements of the bumper standard. In

addition to specifying the information to be disclosed to consumers such as the level of damage to the bumper, the estimated cost to repair this damage, insurance premium surcharge and discount information, and a ranking of each make and model offered for sale; the agency would have required manufacturers to include this information in the owner's manual and on a label affixed to the right front window of each passenger car offered for sale in the United States. The purpose of this proposal was to help purchasers make a more informed decision about passenger vehicle bumper systems. (42 FR 30655.)

On November 7, 1977, NHTSA withdrew these proposals related to the implementation of a consumer information program. In comments to this NPRM, all motor vehicle manufacturers, insurance organizations, and consumer organizations, except for CU, urged the agency to withdraw the proposed alternatives including consumer information programs. Instead, these commenters favored the adoption of the Phase II damageability requirements. (42 FR 57979.)

Despite difficulties in implementing Part 582, the agency has continued to conduct research evaluating the level of interest that new motor vehicle purchasers have concerning bumper standards. In response to a request by the House Committee on Appropriations for Fiscal Year (FY) 1984, NHTSA began studying and developing an objective and meaningful bumper test program related to the damageability of new passenger vehicle bumper systems.

The agency initially specified the following four tasks necessary to develop this program for low speed front and rear collisions: (1) Develop and demonstrate an experimental test methodology on eight passenger vehicle makes and models; (2) conduct additional testing on 15 passenger vehicle makes and models; (3) verify the test results to real world situations by comparing to insurance data; and (4) develop methods for disseminating bumper performance information to consumers. Accordingly, the agency conducted a series of part 581 pendulum impacts at the corners of front and rear bumpers at 5 mph and 7 mph on the rear bumpers and 6 mph and 8 mph on the front bumper corners. The agency selected this test device because it was the only available device for which the data were known to be repeatable and representative of real world passenger car bumper damage. The agency focused on corner impacts, because that is the most frequent point of impact in front

and rear collisions. In addition, the agency obtained a wide range of data on bumper system performance by studying various impact test speeds. By February 1985, twenty three vehicles had been tested under these procedures. In December 1985, the agency published a paper which analyzed the laboratory crash test data and insurance claims data. ("Consumer Information Program on Bumpers—Analysis of Laboratory Test Data and Insurance Claims Data of Selected 1983 and 1984 Model Automobiles" Docket 73-19, Notice 30). The agency believes that these technical analyses failed to produce a consistent positive correlation between laboratory damage bumper tests and real world repair costs as seen by insurance data. Further, commenters to this study failed to identify any new sources of real world data. Many agreed that NHTSA used the best available data, and that creating a data base on low-speed, bumper-involved, front and rear accidents would be impossible or prohibitively expensive. Alternative consumer information programs related to bumper systems would not have provided consumers sufficient information or were unreasonably costly.

In its petition of April 7, 1986, CU requested that the agency implement a detailed consumer information program related to the bumper standard. The petitioner specified a laboratory compliance test for the estimation of damages, a method for the estimation of costs, and guidelines for disseminating this information. This recommendation would require that each manufacturer or importer provide to NHTSA an estimate of repair costs for each make and model of its passenger vehicles. In addition, the ten largest insurers of passenger vehicles would have to provide the agency with the following information: (1) Their estimate as to repair costs for each damaged vehicle, (2) the amount of an insurance premium surcharge that would result from payment of the claim on the insured's policy; and (3) information on whether the insured's policy would be cancelled or not renewed due to payment on the claim. NHTSA then would have to rank each model based on this information and require that each retail automobile dealer distribute this information to prospective purchasers of passenger vehicles.

After a detailed review of the second part of CU's petition and other studies concerning consumer information related to bumper systems, NHTSA has decided to deny this portion of the petition.

As explained above, the agency conducted studies between 1985 and 1987 to develop an effective consumer information program on the damageability of new car bumper systems, which would provide consumers with comparative bumper cost information related to vehicle purchasing decisions. The program failed to produce a consistent positive correlation between damage induced in laboratory bumper tests and insurance accident repair costs. It has been argued that comparisons of test results and accident data need to be segregated by model year, vehicle size, and body style. Such a program would cost over \$2,000,000 and is beyond the means of the agency and would place a significant burden on the auto and insurance industries if undertaken.

In response to the CU petition, NHTSA again looked into a consumer information program that would compare differences in insurance costs for different makes and models of passenger cars based on differences in damage susceptibility and crashworthiness. In January 1989, the agency sent a request to the nine largest insurance companies for insurance cost information. The insurance companies were asked to provide (1) a narrative description of the extent to which the company's insurance rates are affected by the damage susceptibility, crashworthiness, and cost of damage repair and personal injury related to each make and model of 1989 passenger cars; (2) the relative cost impact on insurance premiums of geographical area, driver characteristics, vehicle characteristics, vehicle usage, and other factors; and (3) a list and description of vehicle related discounts (e.g., bumper systems, anti-lock brakes, air bags) and any vehicle related surcharges such as for fiberglass or high performance vehicles. In addition, each company was asked to establish a premium cost for a hypothetical policy holder living in Baltimore, Maryland.

The insurance companies indicated that they use the Vehicle Series Rating (VSR) or a modified version of it to establish premium rates for auto insurance. This information provides a measurement of how damage susceptibility of each make and model and the cost to repair should affect the insurance rates. Each year, these data are used to make adjustments to the premium related to collision coverage and personal injury. The companies indicated that they allow discounts in medical and no-fault premium rates for vehicles with passive restraint systems, air bags, and anti-lock brakes. On the

other hand, they place surcharges on high performance vehicles.

NHTSA also asked the insurance companies to assign a rating from 1 to 10 for a number of factors that impact insurance premium rates. According to State Farm, "a '10' signifies those factors for which the cost difference can range upwards from 50 percent; a '5' signifies those where the cost difference more typically amounts to less than 50 percent." The agency then averaged the ratings for each factor. The factor that insurance companies considered the most important was the driver, which was rated at 9.4. Other highly ranked factors were geographic region at 8.9, vehicle factors at 7.4, and usage at 6.8. Other factors considered moderately important, with a rating of 4.3, were limits of liability, deductible amounts, and good student and multi-car discounts.

NHTSA notes that for a hypothetical policy holder in Baltimore, Maryland, premium costs ranged from a low of \$496 for the owner of a 1989 Yugo and to a high of \$5,261 for the owner of a 1989 Porsche 911. In the moderate price range, the total premium cost for a 1989 Chevrolet Corsica LTS ranged from \$844 to \$1045. Purchase price and prior claims experience of prior or similar models were the main factors in setting cost and ratings for individual models.

A review of all the data submitted by the insurance companies for 1989 model vehicles confirms the agency's findings in 1976. That earlier study concluded that

* * * premium rates are not influenced to any great degree by vehicle damage susceptibility or safety characteristics. Although it is economically logical that a degree of cost savings (premium reduction) could be applied to those vehicles having superior characteristics, the current premium structure would minimize the effect of those vehicle related characteristics, since it is primarily influenced by driver and geographical factors in addition to the price of the car.

In particular, the data indicated that specific components, such as bumpers, do not significantly affect the premium costs of auto insurance.

Based on the foregoing information and review, NHTSA believes that the information specified in CU's petition would not be useful to purchasers of passenger vehicles. In addition, it would require an unwarranted expenditure of the agency's limited resources and would place an unreasonable burden on passenger vehicle manufacturers, importers, and insurers. Therefore, the agency has decided not to adopt the petitioner's request to require that

dealers make such information available.

V. Conclusion

Because NHTSA sees no reasonable possibility that it would adopt the requested amendments to the bumper standard and the insurance cost information regulation at the end of a rulemaking proceeding, NHTSA has decided to deny both portions of the Consumers Union petition.

Authority: 15 U.S.C. 1392, 1407, 1912, 1941, delegation of authority at 49 CFR 1.50.

Issued on June 8, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-13952 Filed 6-14-90; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 90927-9273]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notification of Flexible Area Action System #3.

SUMMARY: NOAA issues this document to inform the public and the fishing industry that the New England Fishery Management Council (Council) is considering Flexible Area Action System #3 under Amendment 3 to the Northeast Multispecies Fishery Management Plan (FMP). The purpose of the action would be to protect a large concentration of yellowtail flounder that are smaller than the legal minimum landing size but are being caught and wastefully discarded at sea. The areas affected are generally described as the eastern portion of the Southern New England/Mid-Atlantic Region Closed Area extending shoreward and the Nantucket Lightship.

DATES: Comments on the proposed action must be received by July 3, 1990.

ADDRESSES: Copies of the NMFS Northeast Regional Director's (Regional Director) fact-finding report and the Council's impact analysis will be available on June 25, 1990, upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01960.

Send comments on the proposed action, the fact-finding report and the Council's impact analysis to Richard B.

Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Jack Terrill (NMFS, Resource Policy Analyst), 508-281-9252.

SUPPLEMENTARY INFORMATION: This action is taken under 50 CFR 651.26 as established by Amendment 3 to the FMP. Amendment 3 was approved by the Secretary of Commerce on November 24, 1989, and published on December 22, 1989 (54 FR 52803), with the regulations effective on December 19, 1989. Section 651.26 specifies a Flexible Area Action System (FAAS) whereby protection can be provided to concentrations of juvenile, sublegal, or spawning fish. As part of this process, the Regional Director will initiate a fact-finding investigation of the alleged discard problem. The Council will also provide an impact analysis of alternative measures that might be implemented under this action.

This action is being initiated in response to reports of large amounts of sublegal yellowtail flounder (less than 13 inches in length) being taken and discarded in the area described. Part of this area is being managed through FAAS #2 to protect yellowtail flounder, which currently specifies that a 5½ inch minimum mesh be used in the area. Operators of vessels using the legal mesh size have reported that high discards are still occurring and have requested that the Council's Multispecies Committee (Committee) examine the situation and take action.

Both the Regional Director's fact-finding report and the Council's impact analysis will be available by June 25, 1990, at the Council Office (see Addresses). To solicit comments on the proposed action, the Committee will hold a public hearing on June 26 at 7:30 p.m. at the Skipper Inn in Fairhaven, Massachusetts, and on June 27 at 7:30 p.m. at the Dutch Inn in Galilee, Rhode Island. A hearing will be held in conjunction with a Committee meeting to review public comment on July 3, 1990, at 1:30 p.m. at the Howard Johnson's Motor Inn, Danvers, Massachusetts. More specific information is below.

(1) The area of the proposed action includes the eastern part of the Southern New England/Mid-Atlantic Region Closed Area, the Nantucket Lightship area, and areas with concentrations of yellowtail flounder shoreward and to the east of this area. The Committee expects that final action will not cover the whole of the area. The eastern part of the Southern New England/Mid-Atlantic Region Closed Area, is defined

by a line drawn between the following coordinates: (a) 40°33.5' N. Latitude, 69°40' W. Longitude; (b) 40°26.5' N. Latitude, 70°40' W. Longitude; (c) 40°40.5' N. Latitude, 70°40' W. Longitude; (d) 40°33' N. Latitude, 71°30' W. Longitude; (e) 40°53' N. Latitude, 71°30' W. Longitude; (f) 41°00' N. Latitude, 70°49.5' W. Longitude; (g) 41°00' N. Latitude, 70°30' W. Longitude; (h) 40°50' N. Latitude, 70°30' W. Longitude; (i) 40°50' N. Latitude, 69°40' W. Longitude; and (a) 40°33.5' N. Latitude, 69°40' W. Longitude.

The Nantucket Lightship area is defined by the following coordinates: (a) 40°43' N. Latitude, 70°00' W. Longitude; (b) 40°43' N. Latitude, 68°59' W. Longitude; (c) 40°28' N. Latitude, 69°12' W. Longitude; (d) 40°28' N. Latitude, 70°00' W. Longitude; and (a) 40°43' N. Latitude, 70°00' W. Longitude. The line between points (b) and (c) corresponds to the LORAN-C 5930-Y-31275 bearing.

(2) The principal species that will be affected by any action will be yellowtail flounder, Atlantic sea scallops, Atlantic cod, summer flounder, winter flounder, and windowpane flounder. To a lesser extent, silver hake *Loligo* squid, and American lobster will be affected.

(3) The types of gear that could be affected by this action are all types of gear capable of catching groundfish. These include otter trawls, midwater trawls, gillnets, and scallop dredges.

(4) The fisheries that potentially will be impacted are the groundfish and Atlantic sea scallop fisheries that operate in the area of the proposed action and use the gear types listed above. Recreational fishing would not be affected by the proposed action.

(5) Based on 1988 landings data, the principal ports that will be affected are New Bedford, Massachusetts; Point Judith, Rhode Island; and Newport, Rhode Island.

(6) The expected duration of the action is 180 days. If implemented as early as July 9, 1990, the action could last until January 4, 1991.

(7) The Committee expects to recommend that those areas within the overall area identified above, that have large concentrations of small yellowtail flounder (less than 13" in length), be closed to fishing with the types of gear described in (3) above. Evidence of large concentrations of yellowtail flounder will be determined to exist if 50 percent or greater of the catch by weight of yellowtail using a 5½" mesh size, is less than the 13" minimum size.

Other action which might be considered is a minimum mesh size of 5½ inches or less in areas in which the

mesh used to catch yellowtail is not already regulated.

(8) The Council will begin analyzing the potential impacts from possible action upon publication of this notice.

(9) The Council's impact analysis will be available on June 25, 1990.

List of Subjects in 50 CFR Part 651

Fishing, Fisheries, Vessel permits and fees.

Dated: June 12, 1990.

Richard H. Schaefer,
Director, Office of Fisheries Conservation and Management.

[FR Doc. 90-13960 Filed 6-12-90; 3:58 pm]

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50 CFR Part 651

[Docket No. 90927-9273]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notification of Flexible Area Action System #4.

SUMMARY: NOAA issues this document to inform the public and the fishing industry that the New England Fishery Management Council (Council) is considering Flexible Area Action System #4 under Amendment 3 to the Northeast Multispecies Fishery Management Plan (FMP). The purpose of the action would be to protect a large concentration of Atlantic cod that are smaller than the legal minimum landing size but are being caught and wastefully discarded at sea. The areas affected are located offshore of Massachusetts, New Hampshire, and Maine and are generally described as Stellwagen Bank and Jeffreys Ledge.

DATES: Comments on the proposed action must be received by July 3, 1990.

ADDRESSES: Copies of the NMFS Northeast Regional Director's (Regional Director) fact-finding report and the Council's impact analysis will be available on June 25, 1990, upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01960.

Send comments on the proposed action, the fact-finding report and the Council's impact analysis to Richard B. Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Jack Terrill (NMFS, Resource Policy Analyst), 508-281-9252.

SUPPLEMENTARY INFORMATION: This action is taken under 50 CFR 651.26 as established by Amendment 3 to the FMP. Amendment 3 was approved by the Secretary of Commerce on November 24, 1989, and published on December 22, 1989 (54 FR 52803), with the regulations effective on December 19, 1989. Section 651.26 specifies a Flexible Area Action System (FAAS) whereby protection can be provided to concentrations of juvenile, sublegal, or spawning fish. As part of this process, the Regional Director will initiate a fact-finding investigation of the alleged discard problem. The Council will also provide an impact analysis of alternative measures that might be implemented under this action.

The Council's Multispecies Committee (Committee) received a request for action after it was reported that significant discards of sublegal (less than 19 inches in length) Atlantic cod were occurring in the vicinity of Stellwagen Bank and Jeffreys Ledge. This event also occurred last year and was confirmed through the observations of State of Massachusetts, Division of Marine Fisheries personnel. To determine the extent of the problem and whether it is appropriate to taken action, the Committee has initiated this action. Both the Regional Director's fact-finding report and the Council's impact analysis will be available by June 25, 1990, at the Council Office (see **ADDRESSES**). The Committee will hold a public hearing on July 3, 1990, at 2:30 PM at the Howard Johnson's Motor Inn, Danvers, Massachusetts, in conjunction with a meeting of the Committee to solicit comments on the proposed action. More specific information in below.

(1) The areas of the proposed action are Stellwagen Bank off the Massachusetts coast and Jeffreys Ledge off the Maine coast. The Stellwagen Bank area is defined by the following coordinates: 42°36' N. Latitude, 70°14' W. Longitude (northeast point); 42°31' N. Latitude, 70°35' W. Longitude (northwest point); 42°05' N. Latitude, 70°26' W. Longitude (southwest point); 42°09' N. Latitude, 70°04' W. Longitude (southeast point).

Jeffreys Ledge is defined by the following coordinates: 43°15' N. Latitude, 70°10' W. Longitude (northwest

point); 43°15' N. Latitude, 69°55' W. Longitude (northeast point); 42°45' N. Latitude, 69°55' W. Longitude (southwest point); 42°45' N. Latitude, 70°25' W. Longitude (southeast point).

(2) The principal species that will be affected by any action will be Atlantic cod, northern shrimp, pollock, winter flounder, American plaice (dab), and haddock. To a lesser extent, silver hake, angler (monkfish), and American Lobster also will be affected.

(3) The types of gear that could be affected by this action are all types of gear capable of catching groundfish. These are otter trawls, midwater trawls, gillnets, scallop dredges, and hook and line gear, both commercial and recreational.

(4) The fisheries that potentially will be impacted are the commercial and recreational groundfish fisheries that operate in the area of the proposed action and use the gear types listed above.

(5) The principal ports that will be affected are Boston, Massachusetts; Gloucester, Massachusetts; Provincetown, Massachusetts; Portland, Maine; and Portsmouth, New Hampshire.

(6) The expected duration of the action is as long as 180 days. If implemented as early as July 9, 1990, the action could last until January 4, 1991.

(7) The Committee expects to recommend that those areas that are determined to have large concentrations of small codfish (less than 19" in length) be closed to fishing with the types of gear, described in (3) above.

Other actions which might be considered are (a) a prohibition of small mesh fishing, (b) a prohibition of mobile net gear, and (c) a prohibition of all fishing except with hook gear.

(8) The Council will begin analyzing the potential impacts from possible action upon publication of this notice.

(9) The Council's impact analysis will be available on June 25, 1990.

List of Subjects in 50 CFR Part 651

Fishing, Fisheries, Vessel permits and fees.

Dated: June 12, 1990.

Richard H. Schaefer,
Director, Office of Fisheries Conservation and Management.

[FR Doc. 90-13959 Filed 6-12-90; 3:58 pm]

BILLING CODE 3510-01-M

Notices

Federal Register

Vol. 55, No. 116

Friday, June 15, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Stillwater PGM Resources; Platinum/Palladium Mine and Milling Facilities; Big Timber Ranger District, Gallatin National Forest, Sweet Grass County, MO; Intent To Prepare Environmental Impact Statement

The Department of Agriculture, Forest Service, and the Montana Department of State Lands will prepare a joint Federal/State environmental impact statement for the platinum/palladium mine and milling facilities on the Big Timber Ranger District, Gallatin National Forest, proposed by Stillwater PGM Resources. Federal, State and local agencies, and other interested individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process.

There will be a public scoping meeting at the Big Timber High School gym, Big Timber, Montana, on June 28, 1990 at 7 p.m.

Robert Gibson, Forest Supervisor of the Gallatin National Forest is the responsible official.

The analysis is expected to take about 9 months. The draft environmental impact statement should be available for public review by March 1, 1990.

Written comments and suggestions concerning the analysis or questions about the proposed action and environmental impact statement should be directed to Sherm Sollid, Forest Geologist, Gallatin National Forest, P.O. Box 130, Bozeman, Montana 59771 or Bill Timko, District Ranger, Big Timber Ranger District, Gallatin National Forest, Box A, Big Timber, Montana 59011.

Dated: June 7, 1990.

Ronald K. Desjardins,
Planning Staff Officer.

[FR Doc. 90-13865 Filed 6-14-90; 8:45 am]

BILLING CODE 3410-11-M

Amendment or Revision of Targhee National Forest Land and Resource Management Plan (Forest Plan); Targhee National Forest; Bonneville, Butte, Clark, Fremont, Jefferson, Lemhi, Madison, Teton Counties, ID; Lincoln, Teton Counties, WY

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: Pursuant to 36 CFR 219.10 (f) and (g) (Forest Planning Amendment and Revision Procedures), the Forest Supervisor of the Targhee National Forest gives notice of the agency's intent to prepare an environmental impact statement for a significant amendment or revision of the Targhee National Forest Land and Resource Management Plan (Forest Plan).

DATES: Comments concerning the scope of the analysis should be received in writing by August 14, 1990.

ADDRESSES: Send written comments to Targhee National Forest, P.O. Box 208, St. Anthony, Idaho 83445.

FOR FURTHER INFORMATION CONTACT: Maureen McBrien, Forest Plan Interdisciplinary Team Leader, (208) 624-3151.

SUPPLEMENTARY INFORMATION: According to 36 CFR 219.10 (f) and (g), Forest Plans are amended or revised when changes are proposed to the objectives, guidelines or other contents of the Forest Plan. The current Targhee National Forest Land Management Plan was approved on October 10, 1985. The Forest Plan amendment or revision will focus on changed conditions or demands in the area covered by the Plan. Those sections of the Forest Plan which continue to be responsive to issues and demands, and which meet requirements for resource protection, will not be amended or revised.

Through monitoring and evaluation of the Forest Plan, the Forest Supervisor of the Targhee National Forest has determined that the following topics should be reexamined:

1. The mix of vegetation types and ages and the management practices needed to achieve the desired mix.
2. Management of transportation.
3. Management requirements for mineral leasing, exploration and development with respect to oil and gas.
4. Compatibility to the Final Greater Yellowstone Coordinating Committee Vision Statement for the Greater Yellowstone Area that will be completed November, 1990.
5. Determination of lands not suitable for timber production and the allowable sale quantity of timber.

Federal, state and local agencies, Native American tribes, individuals and organizations are invited to submit comments on these and other topics which are relevant to management of the Targhee National Forest. These comments will be evaluated to determine whether the Forest Plan should be amended or revised as per 36 CFR 219.10 (f) and (g).

After that decision is made, another Notice of Intent will be issued in September 1990. Following publication of this second Notice of Intent (September 1990), public involvement in the Plan amendment or revision process will be sought by: (1) Sending newsletters and requests for comment to agencies, organizations and individuals, and (2) holding open houses in the local communities. Dates, locations, and times for the open houses will be announced in local news media and in newsletters.

The comment period on the draft environmental impact statement will be 90 days from the date the Environmental Protection Agency publishes the notice of availability in the *Federal Register*.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City*

of *Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The amendment or revision of the Forest Plan is expected to take 2 years; the draft environmental impact statement and proposed Forest Plan amendment should be available for public review in January, 1992. The final environmental impact statement, Record of Decision, and Forest Plan amendment or revision are scheduled to be completed by October, 1992.

The responsible official for approving the Forest Plan amendment or revision is the Regional Forester, Intermountain Region, USDA Forest Service, Federal Building, 324 25th Street, Ogden, Utah 84401. The Forest Supervisor, Targhee National Forest, is delegated responsibility for preparing the amendment or revision.

Dated: June 6, 1990.

James L. Caswell,
Forest Supervisor.

[FR Doc. 90-13866 Filed 6-14-90; 8:45 am]

BILLING CODE 3410-11-M

**Bradfield River Road Corridor
Identification Project; Tongass
National Forest, Stikine Area, Wrangell
Ranger District, Alaska**

AGENCY: USDA, Forest Service.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service and the State of Alaska, Department of Transportation

and Public Facilities (ADOTPF) as joint lead agencies, will prepare an Environmental Impact Statement (EIS) to evaluate alternative routes for a road corridor from tidewater up the Bradfield River near Wrangell, Alaska to the United States/Canada Border, a distance of 31 miles. The proposal also includes a port terminal facility at saltwater on the Bradfield Canal.

DATE: Initial comments concerning this proposal should be received in writing by July 18, 1990. Send comments or requests for further information either to: (1) Van Sundberg, Project Environmental Coordinator, ADOTPF, P.O. Box 021467, Juneau, Alaska 99802, phone: (907) 364-4256, or (2) Thomas J. Sheehy, Regional Environmental Coordinator, Forest Service, P.O. Box 21628, Juneau, Alaska 99801, phone: (907) 586-8887.

SUPPLEMENTARY INFORMATION:

1. Purpose and Scope of the Decision

Selection of a transportation route from salt water to the United States/Canada Border is the first step in the development of the Bradfield Canal as a salt water port for mineral and timber resources from the Iskut River region of British Columbia. At the present time, development of those resources is constrained by lack of road access to tidewater port facilities. Production of some especially high value deposits is presently being supported by aircraft operating out of Wrangell, Alaska. An effort by the British Columbia (BC) government to connect the Iskut River mines to the British Columbia Cassiar Highway is also ongoing. The Canadian road will reduce operating costs sufficiently to allow development of some presently unviable properties, but the haul costs to Stewart, British Columbia from the Iskut region may still make development of other properties cost prohibitive. An approved route for road development may facilitate further development in British Columbia by reducing haul costs in comparison to the proposed Canadian road system alternative. Benefits of road and port development accruing to Alaska include direct employment at Bradfield Port and increased commerce in surrounding communities. Foreseeable potential benefits include some degree of community development at Bradfield Port, eventual road upgrade to a public highway connection with the continental road system, and Bradfield Port assuming an increasingly important role in United States/Canadian regional resource development.

A range of alternative road corridors up the Bradfield River to the United

States/Canada Border will be evaluated. A No Action alternative will be evaluated.

2. Scoping and Public Participation

This Notice of Intent constitutes the beginning of the scoping process. A scoping letter describing the proposal and soliciting comments will be mailed to appropriate Federal, State and local agencies, and to private individuals, groups and organizations known to have an interest in the project. A scoping public meeting will be held in Wrangell, and other meetings and information sharing opportunities will be arranged to ensure public input throughout the EIS process. The scoping process will include:

- Identification of potential issues.
- Identification of issues to be analyzed in depth.
- Elimination of insignificant issues or those which have been covered by a previous environmental review.
- Determination of potential cooperating agencies and assignment of responsibilities.

A public hearing will be held upon completion of the draft EIS. Public notice will be given of the time and place of meetings and hearings.

3. Timeline

The analysis is expected to take about 6 months. The draft EIS should be available about April 1991. The final Environmental Impact Statement is scheduled to be completed by December 1991.

Comments: Interested publics are invited to comment. The comment period on the draft EIS will be 45 days from the date on which the Environmental Protection Agency's Notice of Availability appears in the *Federal Register*. It is very important that those interested in this proposed action also participate at that time. To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provision of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of the draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions (*Vermont Yankee Nuclear Power Corporation NRDC*, 435 U.S. 519, 553 [1978]). Environmental objections that

could have been raised at the draft stage may be waived if not raised until after completion of the final EIS (*City of Angoon v. Hodel*, [9th Circuit, 1986]) and *Wisconsin Heritages, Incorporated v. Harris*, 490 F. Supp. 1334 [E.D. Wis. 1980].

The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

Following issuance of the Final EIS, the responsible official will consider the comments, responses, environmental consequences discussed in the document(s), and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decisions and the reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

The responsible official is Michael A. Barton, Regional Forester, Alaska Region, 709 W. 9th Street, Juneau, Alaska 99802-1628.

Dated: June 8, 1990.

William G. Edwards,
Acting Regional Forester, Alaska Region.
[FR Doc. 90-13923 Filed 6-14-90; 8:45 am]
BILLING CODE 3410-11-M

Environmental Impact Statement for the Alaska Pulp Corporation Long-term Timber Sale, North and East Kuiu Project Area; Tongass National Forest, Alaska

AGENCY: USDA, Forest Service.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The United States Department of Agriculture (USDA) Forest Service, will prepare an Environmental Impact Statement (EIS) to evaluate a proposal to make available approximately 80 million board feet (MMBF) of National Forest timber to contribute to fulfilling the requirements of the Long-Term Timber Sale Contract between Alaska Pulp Corporation (APC) and the USDA, Forest Service, contract number 12-11-010-1545. The proposed action is road construction and timber harvesting in that portion of the APC contract area administered by the Stikine Area of the Tongass National Forest, specifically, Management Areas S04 (North Kuiu) and S09 (East Kuiu) and a small non-wilderness portion of S06 (Tebenkof) on Kuiu Island in Southeast Alaska.

DATES: Initial comments concerning the proposal to construct roads and harvest timber in the North and East Kuiu Project Area should be received in writing by July 15, 1990. Send requests for further information or written comments to Michael Condon, Interdisciplinary Team Leader, USDA, Forest Service, P.O. Box 309, Petersburg, AK 99833.

SUPPLEMENTARY INFORMATION:

1. Purpose and Scope of the Decision

Providing for a continuous flow of natural resources is the mission of the Forest Service. In addition to providing a sustained supply of wilderness, recreation, forage, wildlife, water, and fish; providing wood products to local industry is a responsibility of the USDA, Forest Service. The North and East Kuiu Project Area is under consideration for timber harvesting and road construction to make timber available under the terms of the APC Long-term Timber Sale Contract, dated January 25, 1956.

The nature of the decision to be made is whether and how to make available timber to meet contractual obligations to the APC from the North and East Kuiu Project Area, while also providing a combination of recreation, water, wildlife, and fish for the needs of society, now and into the future. Michael A. Barton, Regional Forester, Alaska Region, will decide: (a) How much volume to make available; (b) the location and design of timber harvest units and necessary log transfer facilities; (c) the location and design of associated mainline and local road corridors; and (d) mitigation measures and enhancement opportunities for resources other than timber.

The proposal would make available for harvest approximately 80 MMBF of timber and include approximately 25 to 50 miles of road construction. This would keep a timber sale operator in work for two operating seasons.

The geographic location is the north and east portions of Kuiu Island within Tongass Land Management Plan (TLMP) Management Area S04, North Kuiu, which includes value comparison units (VCU) 398, 399, 400, 401, 402, and 421; and management Area S09, East Kuiu, which includes VCU's 416, 417, 418, 419, and 420. VCU's were established for inventory and analysis purposes during the original TLMP planning process. The whole Forest was divided into 867 VCU's, which usually encompassed watershed drainage basins and averaged 18,000 acres in size. All VCU's were allocated to one of the four Land-Use Designations (LUD) in TLMP. The project area also includes VCU 405.1

which is the nonwilderness portion of Management Area S06, Tebenkof, VCU 405.1 is designated LUD I Release in the Amended TLMP. LUD I Release means the area was considered for wilderness designation but not selected. This VCU will be considered for road construction, but not timber harvest in this project. Such road construction would be considered if it were the only practical way to access other portions of the study area. Road construction could not occur in VCU 504.1 unless the TLMP is amended or revised and the management direction for this area is changed to allow for road construction. Except for VCU 405.1, the project proposal is consistent with the TLMP land-use designation activities, falls within the APC Contract Area, and is available for entry in the current Forest Plan.

The project area encompasses approximately 218,000 acres of land. Approximately 73,500 acres, or 34 percent of the project area, were identified by the TLMP as forest land scheduled for harvesting over a 100 year time-span. Timber harvesting has occurred in all the VCU's except 401 and 405.1. VCU's 416, 417, and 418 are currently under consideration for possible wilderness classification in the House passed Tongass Timber Reform Act (HR-987) but not in the Senate version of this Bill. Any decisions by the Regional Forester will fully consider the Congressional interest in the VCU's.

Since the 1960's, approximately 20,365 acres of the 73,500 acres scheduled for harvest in this area by the TLMP have been harvested. The Regional Forester's decision of November 1980 on the Supplement to the Final Environmental Statement for the 1981 to 1986 and the 1986 to 1990 Operating Periods made 2,995 acres available for harvest. The current project proposal is to schedule approximately 2,300 acres more for timber harvest. If harvest occurs as described above, approximately 48,000 acres of suitable forest land would remain in an unchanged condition. Overall, a total of 106,700 acres of commercial forest land (which includes the 48,000 acres of suitable land) would remain in an unchanged condition.

A reasonable range of alternatives will be developed, including a No Action alternative. No additional road building nor timber harvest would occur under the No Action alternative in the North and East Kuiu Project Area. Since the Forest Service is responsible under the terms of the APC Long-Term Timber Sale Contract to make volume available, these activities would have to occur in other locations within the designated

contract area if a No Action alternative were selected.

2. Scoping and Public Participation

This Notice of Intent constitutes the beginning of the scoping process which will end July 15, 1990. At the time of this notice, a scoping letter is being mailed to interested groups, organizations, and members of the public. Following this initial mailing, individual contacts, meetings, and information sharing workshops will be arranged, depending on public interest, to provide opportunities for review and input throughout the National Environmental Policy Act process.

3. Expected Time for Completion

A Draft EIS is projected for issuance approximately 12 months from the date of the Notice of Intent, or June 15, 1991. Issuance of the Final EIS for the North and East Kuiu Project Area is projected for December 1991.

4. Comments

Interested publics are invited to comment.

The comment period on the Draft EIS will be 45 days from the date the Environmental Protection Agency's Notice of Availability appears in the Federal Register. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the Draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewer's of Draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 533 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the Final EIS. *City of Angoon v. Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final EIS.

The responsible official for the decision is Michael A. Barton, Regional Forester, Alaska Region, Juneau, Alaska.

Written comments and suggestions concerning the analysis and EIS should be sent to Michael Condon, Interdisciplinary Team Leader, Supervisor's Office, Stikine Area, Tongass National Forest, P.O. Box 309, Petersburg, AK 99833, phone: (907) 772-3841.

Dated: June 8, 1990.
William G. Edwards,
Acting Regional Forester, Alaska Region.
[FR Doc. 90-13922 Filed 6-14-90; 8:45 am]
BILLING CODE 3410-11-M

National Forest: Timber Sales, Sequoia National Forest, CA; Exemption

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal, Hume Lake Ranger District, Sequoia National Forest

SUMMARY: The Forest Service is exempting from appeal the decisions resulting from the Cherry Insect Salvage and the Eshom Insect Salvage analyses. These environmental analyses are being prepared in response to the severe timber mortality in the Eshom and Pierce Creek watersheds on the Hume Lake Ranger District, Sequoia National Forest. The area proposed for exemption is south and west of Kings Canyon National Park. The unusual mortality is being caused by drought and related insect infestation.

There are currently higher than normal levels of tree mortality occurring throughout the Sequoia National Forest as a result of four consecutive years of below normal precipitation. The drought has caused a high degree of stress within the trees, which reduces their natural defense mechanisms and weakens them to the extent that they are now predisposed to attack by bark and engraver beetles. The Eshom and Pierce Creek watersheds are experiencing mortality well above average for the rest of the Forest.

Trees subject to insect attack act not only as hosts for the insects which move on to healthy trees, but also deteriorate very rapidly. (Although harvest of affected trees will probably not be effective in reducing the spread of the infestation.) The commercial value of lumber recovered from infested trees declines rapidly as the wood deteriorates. Prompt removal of the dead and dying timber minimizes value and volume loss. In addition, excessive numbers of dead trees produce heavy fuel concentrations, which makes wildfire control extremely difficult.

The affected area has terrain that is appropriate for ground-based logging systems such as tractors and skidders. No new road construction is being considered for these projects.

Salvage logging is costly, compared to green timber sales due to the typically low volumes per acre removed. To be economically feasible, timber value must be high enough to compensate for these higher logging costs. If dead and dying timber is not removed promptly, the decline in value and volume caused by deterioration will prevent economical removal. For this reason, it is necessary to remove dead and dying timber as soon as possible if the environmental analyses support the decision to do so.

Pursuant to 36 CFR part 217.4(a)(11), it is my decision to exempt from appeals the decisions relating to the harvest and restoration of lands affected by drought-induced timber mortality in the Eshom and Pierce Creek watersheds of the Hume Lake Ranger District, Sequoia National Forest. The two environmental documents being prepared will address the effects of the proposed actions on the environment, will document public involvement, and will address the issues raised by the public.

EFFECTIVE DATE: This decision is effective June 15, 1990.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to DeAnn Zwright, Timber Appeals Coordinator, Timber Management Staff, Pacific Southwest Region, Forest Service, USDA, 630 Sansome Street, San Francisco, CA 94111, (415) 705-2842, or to James A. Crates, Forest Supervisor, Sequoia National Forest, 900 W. Grand Avenue, Porterville, CA 93257, (209) 784-1500.

ADDITIONAL INFORMATION: The environmental analyses for this proposal will be documented in the Cherry Insect Salvage and the Eshom Insect Salvage environmental documents. Pursuant to 40 CFR 1501.7, scoping is currently being conducted by the Hume Lake Small Sales Officer to determine the issues to be addressed in the environmental analyses. The Forest is expected to complete the environmental documentation by early July 1990. The environmental documents and related maps will be available for public review at the Hume Lake Ranger District, 35860 E. Kings Canyon Road, Dunlap California, CA 93621 and at the Forest Supervisor's Office, Sequoia National Forest, 900 W. Grand Avenue, Porterville, CA 93257.

The catastrophic damage presently occurring in the Eshom and Pierce Creek watersheds involves approximately

8,000 acres. Within this area, approximately 4,500 acres and 1 million board feet (MMBF) is presently being considered for salvage. The value to the Forest Service of 1 MMBF salvage volume is estimated at \$60,000. This figure does not include the many jobs and thousands of dollars in benefits that are realized in related service, supply and construction industries. Tulare County will share 25% of the selling value for any of the timber that is salvaged in a commercial timber sale. Rehabilitation and restoration measures will be necessary for watershed protection, erosion prevention and fuels reduction.

Delays for any reason could jeopardize chances of accomplishing recovery and rehabilitation of the damaged resources during this field season. Delays would result in volume and value losses, and increases the chances of wildfires occurring due to the large additional quantity of standing and down fuels.

Dated: June 11, 1990.

David M. Jay,

Deputy Regional Forester.

[FR Doc. 90-13905 Filed 6-14-90; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-815]

Initiation of Antidumping Duty Investigation; Gary Portland Cement (Including Cement Clinker) From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of gray portland cement and cement clinker (cement) from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of gray portland cement and cement clinker are materially injuring, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 2, 1990. If that determination is affirmative, we will

make a preliminary determination on or before October 25, 1990.

EFFECTIVE DATE: June 15, 1990.

FOR FURTHER INFORMATION CONTACT: Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On May 18, 1990, we received a petition filed in proper form by The Ad Hoc Committee of Southern California Producers of Gray Portland Cement. In compliance with the filing requirements of the Department's regulations (19 CFR 353.12), petitioner alleges that imports of cement are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), (F), or (G) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in section 353.14 of the Department's regulations.

United States Price

Petitioner bases its estimate of United States Price (USP) on official Japanese export statistics, adjusted for export-related charges, and on the February, 1990 per unit Customs value for imports of gray portland cement from Japan under HTS item numbers 2523.1000, 2523.2900 and 2523.9000 as reported in the Department's IM-145 reports. Based on information in the petition, the Department increased USP to reflect the three percent Japanese consumption tax.

Foreign Market Value

Petitioner's estimate of Foreign Market Value (FMV) is based on interviews with sales representatives of cement producers, and the organizations that distribute a majority of cement sold in Japan, as well as interviews with various end-users. Petitioner's investigator determined the actual delivered prices (less estimated distributor's margins) charged by the largest cement producers for high early strength gray portland cement (bulk quantities in excess of 800 metric tons) for March 1, 1990 in the Tokyo and Osaka markets.

Petitioner averaged the delivered prices for the five largest cement producers for each of the two major metropolitan markets to construct a single average value for both markets. Petitioner reduced the average values to reflect an ex-factory price by subtracting charges for freight to the customer, loading/unloading and "other charges." Petitioner then averaged the net prices for the two markets. Based on information in the petition, the Department: 1) increased FMV to offset the three percent added to U.S. Price for the Japanese consumption tax, and 2) reduced FMV by 300 yen per metric ton for inland freight from the production facilities to the metropolitan service stations.

Based on a comparison of United States Price and Foreign Market Value, petitioner has estimated dumping margins ranging from 102 to 136 percent. The Department recalculated estimated dumping margins consistent with the narrative descriptions contained in the USP and FMV sections above, resulting in estimated dumping margins ranging from 98 to 125 percent.

Initiation of Investigation

Pursuant to section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to petitioner supporting the allegations.

We have examined the petition and found that it complies with the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of gray portland cement and clinker from Japan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we

will make our preliminary determination by October 25, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The products covered in this investigation include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker is the primary raw material used in the production process. Clinker has no use other than grinding into finished cement.

Gray portland cement is currently classifiable under HTS item number 2523.2900 and cement clinker is classifiable under item number 2523.1000. Gray portland cement has also been entered under item number 2523.9000 as "other hydraulic cements".

ITC Notification

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 2, 1990, whether there is a reasonable indication that imports of Gray Portland Cement and Cement Clinker From Japan are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: June 7, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-13878 Filed 6-14-90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

[Docket No. 71015-0067]

Endangered and Threatened Species; Listing and Recovery Priority Guidelines

AGENCY: National Marine Fisheries Service (NOAA Fisheries), NOAA, Commerce.

ACTION: Notice.

SUMMARY: NOAA Fisheries issues guidelines for assigning priorities to species for listing, delisting, and reclassification as endangered and threatened under the Endangered Species Act of 1973 (Act) and for developing and implementing recovery plans for species that are listed under the Act.

FOR FURTHER INFORMATION CONTACT: Patricia Montano, Protected Species Management Division, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, MD 20910, (301/427-2322).

SUPPLEMENTARY INFORMATION:

Background

For those species under the jurisdiction of the Secretary of Commerce, section 4(a) of the Act requires NOAA Fisheries to determine whether any species of wildlife or plant should be: (1) Listed as an endangered or threatened species (listing); (2) changed in status from threatened to endangered or changed in status from endangered to threatened (reclassification); or (3) removed from the list (delisting). Section 4(h) of the Act requires that NOAA Fisheries establish agency guidelines which include a priority ranking system for listing, reclassification, or delisting.

Section 4(f) of the Act requires NOAA Fisheries to develop and implement recovery plans for the conservation and survival of all endangered or threatened species, unless such a plan will not promote the conservation of the species. In general, listed species which occur entirely outside U.S. jurisdiction are not likely to benefit from recovery plans. Foreign species are more likely to benefit from bilateral or multilateral agreements under section 8 of the Act

and other forms of international cooperative efforts. Section 4(f) of the Act also requires NOAA Fisheries to give priority to those endangered or threatened species (without regard to taxonomic classification) most likely to benefit from such plans, particularly those species that are, or may be, in conflict with construction or other developmental projects or other forms of economic activity. Section 4(h) of the Act requires that NOAA Fisheries establish a system for developing and implementing recovery plans on a priority basis.

The assignment of priorities to listing, reclassification, delisting, and recovery actions will allow NOAA Fisheries to use the limited resources available to implement the Act in the most effective way. On May 30, 1989, NOAA Fisheries published proposed guidelines in the *Federal Register* (54 FR 22925) and requested comments. No comments were received from the public. NOAA Fisheries issues these final guidelines with only slight modifications from the proposal based on internal reviews.

These guidelines are based primarily on guidelines published by the U.S. Fish and Wildlife Service (FWS) on September 21, 1983 (48 FR 43098). NOAA Fisheries believes that, to the extent practical, both agencies should follow similar priority guidelines for listing, reclassification, delisting and recovery. To the extent possible, NOAA Fisheries has adopted the priority guidelines in use by FWS. However, due to the smaller number of listed species and the anticipated smaller number of candidate species under NOAA Fisheries jurisdiction, NOAA Fisheries believes that fewer priority categories are necessary and the FWS guidelines have been modified accordingly.

These priority systems are guidelines and should not be interpreted as inflexible frameworks for making final decisions on funding or on performance of tasks. They will be given considerable weight by the agency in making decisions; however, the agency will also evaluate the cost-effectiveness of funding and tasks and take advantage of opportunities. For example, the agency may be able to conduct a relatively low priority item in conjunction with an ongoing activity at little cost.

A. Listing, Reclassification, and Delisting Priorities

1. Listing and Reclassification From Threatened to Endangered

In considering species to be listed or reclassified from threatened to

endangered, two criteria will be evaluated to establish four priority categories as shown in Table 1.

TABLE 1.—PRIORITIES FOR LISTING OR RECLASSIFICATION FROM THREATENED TO ENDANGERED

Magnitude of threat	Immediacy of threat	Priority
High.....	Imminent.....	1
	Non-imminent.....	2
Low to Moderate.....	Imminent.....	3
	Non-imminent.....	4

The first criterion, magnitude of threat, gives a higher listing priority to species facing the greatest threats to their continued existence. Species facing threats of low to moderate magnitude will be given a lower priority. The second criterion, immediacy of threat, gives a higher listing priority to species facing actual threats than to those species facing threats to which they are intrinsically vulnerable, but which are not currently active.

2. Delisting and Reclassification From Endangered to Threatened

NOAA Fisheries currently reviews listed species at least every five years in accordance with section 4(c)(2) of the Act to determine whether any listed species qualify for reclassification or removal from the list. When a species warrants reclassification or delisting, priority for developing regulations will be assigned according to the guidelines given in Table 2. Two criteria will be evaluated to establish six priority categories.

TABLE 2.—PRIORITIES FOR DELISTING AND RECLASSIFICATION FROM ENDANGERED TO THREATENED

Management impact	Petition status	Priority
High.....	Petitioned action ..	1
	Unpetitioned action ..	2
Moderate.....	Petitioned action ..	3
	Unpetitioned action ..	4
Low.....	Petitioned action ..	5
	Unpetitioned action ..	6

The priorities established in Table 2 are not intended to direct or mandate decisions regarding a species' reclassification or removal from the list. The priority system is intended only to set priorities for developing rules for species that no longer satisfy the listing criteria for their particular designation under the Act. The decision regarding whether a species will be retained on

the list, and in which category, will be based on the factors contained in section 4(a)(1) of the Act and 50 CFR 424.11.

The first consideration of the system outlined in Table 2 accounts for the management impact entailed by a species' inclusion on the list. Management impact is the extent of protective actions, including restrictions on human activities, which must be taken to protect and recover a listed species. If the current listing is no longer accurate, continuing protective management actions could divert resources from species more in need of conservation and recovery efforts, or impose an unnecessary restriction on the public. Because the Act mandates timely response to petitions, the system also considers whether NOAA Fisheries has been petitioned to remove a species from the list or to reclassify a species from endangered to threatened. Higher priority will be given to petitioned actions than to unpetitioned actions that are classified at the same level of management impact.

There is no direct relationship between the systems outlined in Tables 1 and 2. Although the same statutory criteria apply in making listing and delisting determinations, the considerations for setting listing and delisting priorities are quite different. Candidate species facing immediate, critical threats will be given a higher priority for listing than species being considered for delisting. Likewise, a delisting proposal for a recovered species that would eliminate unwarranted utilization of limited resources may, in appropriate instances, take precedence over listing proposals for species not facing immediate, critical threats.

B. Recovery Plan Preparation and Implementation Priorities

The recovery priority system will be used as a guide for recovery plan development, recovery task implementation and resource allocation. It consists of two parts—species recovery priority and recovery task priority. Species recovery priority will be used for recovery plan development. Recovery task priority, together with species recovery priority, will be used to set priorities for funding and performance of individual recovery tasks as explained below.

1. Species Recovery Priority

Species recovery priority is based on three criteria—magnitude of threat, recovery potential and conflict. These criteria are arranged in a matrix yielding

twelve species recovery priority numbers (Table 3).

TABLE 3.—SPECIES RECOVERY PRIORITY

Magnitude of threat	Recovery potential	Conflict	Priority
High.....	High.....	Conflict.....	1
		No conflict.....	2
	Low to moderate.....	Conflict.....	3
		No conflict.....	4
	Low to moderate.....	Conflict.....	5
		No conflict.....	6
	Low to moderate.....	Conflict.....	7
		No conflict.....	8
Low.....	High.....	Conflict.....	9
		No conflict.....	10
	Low to moderate.....	Conflict.....	11
		No conflict.....	12

The first criterion, magnitude of threat, is divided into three categories: High, moderate, and low. The high category means extinction is almost certain in the immediate future because of a rapid population decline or habitat destruction. Moderate means the species will not face extinction if recovery is temporarily held off, although there is a continuing population decline or threat to its habitat. Taxa in the low category are rare, or are facing a population decline which may be a short-term, self-correcting fluctuation, or the impacts of threats to the species' habitat are not fully known.

The second criterion, recovery potential, assures that resources are used in the most cost effective manner within each magnitude of threat ranking. Priority for preparing and implementing recovery plans would go to species with the greatest potential for success. Recovery potential is based on how well biological and ecological limiting factors and threats to the species' existence are understood, and the extent of management actions needed. A species has a high recovery potential if the limiting factors and threats to the species are well understood and the needed management actions are known and have a high probability of success. A species has a low to moderate recovery potential if the limiting factors or threats to the species are poorly understood or if the needed management actions are not known, are cost-prohibitive or are experimental with an uncertain probability of success.

The third criterion, conflict, reflects the Act's requirement that recovery priority be given to those species that are, or may be, in conflict with construction or other developmental projects or other forms of economic

activity. Thus, species judged as being in conflict with such activities will be given higher priority for recovery plan development and implementation than non-conflict species within the same magnitude of threat/recovery potential ranking. Species in conflict with construction or other developmental projects or other forms of economic activity would be identified in large part through consultations conducted with Federal agencies under section 7 of the Act.

2. Recovery Task Priority

Recovery plans will identify specific tasks that are needed for the recovery of a listed species. NOAA Fisheries will assign tasks priorities of 1 to 3 based on the criteria set forth in Table 4.

TABLE 4.—RECOVERY TASK PRIORITY.

Priority	Type of task
1.....	An action that must be taken to prevent extinction or to identify those actions necessary to prevent extinction.
2.....	An action that must be taken to prevent a significant decline in population numbers, habitat quality, or other significant negative impacts short of extinction.
3.....	All other actions necessary to provide for full recovery of the species.

It should be noted that even the highest priority tasks within a plan are not given a Priority 1 ranking unless they are actions necessary to prevent a species from becoming extinct or to identify those actions necessary to prevent extinction. Therefore, some plans will not have any Priority 1 tasks. In general, Priority 1 tasks only apply to a species facing a high magnitude of threat (species recovery priority 1-4).

When the task priorities (Table 4) are combined with the species recovery priority (Table 3), the most critical activities for each listed species can be identified and evaluated against other species recovery actions. This system recognizes the need to work toward the recovery of all listed species, not simply those facing the highest magnitude of threat. In general, NOAA Fisheries intends that Priority 1 tasks will be addressed before Priority 2 tasks and Priority 2 tasks before Priority 3 tasks. Within each task priority, species recovery priority will be used to further rank tasks. For example, a Priority 1 task for a species with a recovery priority of 4 would rank higher than a Priority 2 task for a species with a

recovery priority of 1; and, a Priority 1 task for a species with a recovery priority of 2 would rank higher than a Priority 1 task for a species with a recovery priority of 4. For tasks with the same priority ranking, the Assistant Administrator will determine the appropriate allocation of available resources.

C. Recovery Plans

As recovery plans are developed for each species, specific recovery tasks are identified and prioritized according to the criteria discussed above. As new information warrants, these plans, including tasks and priorities, will be reviewed and revised. In addition, funding and implementation of the tasks identified in recovery plans will be tracked in order to aid in effective management of the recovery program.

NOAA Fisheries believes that periodic review and updating of plans and tracking of recovery efforts are important elements of a successful recovery program. Information from tracking and implementing recovery actions and other sources will be used to review plans and revise them as necessary. These and other elements of NOAA's recovery planning process will be discussed in more detail in Recovery Planning Guidelines that the agency is developing.

Classification

The General Counsel of the Department of Commerce certified to the Small Business Administration that these guidelines would not have a significant economic impact on a substantial number of small entities because they do not direct or mandate decisions on a species' listing, reclassification or delisting. Rather, they set up priorities for later decisions as to agency review of species, recovery plan development and recovery task implementation. As a result, a regulatory flexibility analysis was not prepared.

Dated: June 8, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries,
National Oceanic and Atmospheric
Administration.

[FR Doc. 90-13895 Filed 6-14-90; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1990 commodities to be produced and a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: July 16, 1990.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On April 6 and 27, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (55 FR 12878 and 17804) of proposed additions to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540). After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the service at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

- The actions will not result in any additional reporting, recordkeeping or other compliance requirements.
- The actions will not have a serious economic impact on any contractors for the commodities and service listed.
- The actions will result in authorizing small entities to produce the commodities and provide the service procured by the Government.

Accordingly, the following commodities and service are hereby added to Procurement List 1990:

Commodities

Igniter Assembly, Empty

1330-01-M00-0103

(Requirements for Pine Bluff Arsenal, Pine Bluff, Arkansas only)

Starter Rope, Engine

2990-00-961-3692

Apron, Protective

6532-00-935-9765

Tray, Fiberboard, Three-Sided

P.S. Item 136

Service

Janitorial/Custodial, Barnes Building,
495 Summer Street, Boston,
Massachusetts.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 90-13944 Filed 6-14-90; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1990; Proposed Additions

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1990 services to be provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 16, 1990.

ADDRESSES: Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following services to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540):

Janitorial/Custodial, Armed Forces Reserve Center, 151 Vo-Tech Road, Lexington, Kentucky.

Janitorial/Custodial, Social Security Administration, Warehouses 5 & 7, GSA Center, Auburn, Washington.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 90-13945 Filed 6-14-90; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF ENERGY**Defense Nuclear Facilities Safety Board Recommendation 90-3; Future Monitoring Programs at the Department of Energy's Hanford Site, WA; Correction of Record**

AGENCY: Office of Nuclear Safety, Department of Energy.

ACTION: Correction of Record Regarding the Department's Response to Defense Nuclear Facilities Safety Board Recommendation 90-3.

SUMMARY: On May 23, 1990, the Department published its Response to Recommendation 90-3 of the Defense Nuclear Facilities Safety Board (Defense Board) regarding Future Monitoring Programs at the Department of Energy's Hanford Reservation, located near Richland, Washington. (55 FR 21219-21220). The transmittal memorandum accompanying that notice erroneously identified the Department's response as a Request for and Approval of Extension of Time. This notice is published to correct that error.

FOR FURTHER INFORMATION CONTACT: Steven M. Blush, Director, Office of Nuclear Safety, U.S. Department of Energy, Washington, DC 20585. Phone (202) 586-2407.

In the heading of the document published May 23, 1990 (55 FR 21219), the language "Request for and Approval of Extension of Time" is removed, and the "Action" line is corrected to read "Response to Defense Nuclear Facilities Safety Board Recommendation 90-3."

Issued in Washington, DC, on June 12, 1990.

Joseph E. Fitzgerald,

Acting Director, Office of Nuclear Safety.

[FR Doc. 90-13918 Filed 6-14-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER90-404-000, et al.]

Georgia Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 11, 1990.

Take notice that the following filings have been made with the Commission:

1. Georgia Power Co.

[Docket No. ER90-404-000]

Take notice that on June 1, 1990, Georgia Power Company ("Georgia Power") tendered for filing a change in practice under its Interchange Contract with the Crisp County Power Commission, dated as of July 1, 1980.

Georgia Power states that the change, consistent with changes proposed by other operating companies of the Southern electric system, will implement a switch from "blended replacement fuel cost" to "marginal replacement fuel cost." As explained in the filing, Georgia Power expects that the change would result in decreased production costs for all territorial and off-system customers.

Georgia Power states that it has served a copy of its filing on the Crisp County Power Commission.

Comment date: June 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Northern States Power Co. (Minnesota); Northern States Power Co. (Wisconsin)

[Docket No. ER90-406-000]

Take notice that Northern States Power Company-Minnesota and Northern States Power Company-Wisconsin filed on June 1, 1990, a transmission services agreement with the Wisconsin Public Power Incorporated System. NSP states that the agreement provides the means for transition from bundled power supply service to transmission service for the WPPI members located within NSP-Wisconsin's service territory.

Comment date: June 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Georgia Power Co.

[Docket No. ER90-405-000]

Take notice that on June 1, 1990, Georgia Power Company ("Georgia Power") tendered for filing a change in practice under its Contract Executed by the United States of America, Department of Energy, Acting by and through the Southeastern Power Administration, dated as of January 29, 1985.

Georgia Power states that the change, consistent with changes proposed by other operating companies of the Southern electric system, will implement a switch from "blended replacement fuel cost" to "marginal replacement fuel cost." As explained in the filing, Georgia Power expects that the change would result in decreased production costs for all territorial and off-system customers.

Georgia Power states that it has served a copy of its filing on the United States of America, Department of Energy, Acting by and through the Southeastern Power Administration.

Comment date: June 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power & Light Co.

[Docket No. ER90-433-000]

Take notice that on June 5, 1990, Florida Power & Light Company ("FPL"), tendered for filing a document entitled "Amendment Number Six to Contract for Interchange Service Between Florida Power Corporation and Florida Power & Light Company." FPL's filing includes a Certificate of Concurrence executed by Florida Power Corporation ("FPC") in lieu of an independent filing.

FPL states that under Amendment Number Six, FPL and FPC have agreed to establish an additional interconnection between their electric systems and abandon an existing interconnection between their electric systems.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Amendment be made effective June 5, 1990. FPL states that a copy of the filing was served on Florida Power Corporation.

Comment date: June 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Southern Company Services, Inc.

[Docket No. ER90-432-000]

Take notice that on June 1, 1990, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company ("Southern Companies"), tendered for filing a change in practice under Service Schedule A, Service Schedule B, and Service Schedule C of the Interchange Contract between South Carolina Public Service Authority and Southern Companies dated August 7, 1981, as amended. Southern Companies are proposing to adopt marginal replacement fuel cost for use in generating unit dispatch. Marginal replacement fuel cost dispatch will only be implemented after it is accepted without refund obligation under all wholesale and retail rates of Southern Companies. Southern Companies request that the change in practice be allowed to become effective on August 1, 1990.

Comment date: June 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Southern Company Services, Inc.

[Docket No. ER90-403-000]

Take notice that on June 1, 1990, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power

Company, tendered for filing Amendment No. 1 dated May 31, 1990 to the Southern Company System Intercompany Interchange Contract and Allocation Methodology and Periodic Rate Computation Manual. Southern Companies are proposing to adopt marginal replacement fuel cost for use in generating unit dispatch. Marginal replacement fuel cost dispatch will only be implemented after it is accepted without refund obligation under all wholesale and retail rates of the Operating Companies of the Southern electric system. Southern Companies request that the amendment be allowed to become effective on August 1, 1990.

Comment date: June 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-13880 Filed 6-14-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER 90-418-000, 3et al.]

Southern Company Services, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 8, 1990.

Take notice that the following filings have been made with the Commission:

1. Southern Company Services, Inc.

[Docket No. ER90-418-000]

Take notice that on June 1, 1990, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company ("Southern Companies"), tendered for filing a change in practice under Service Schedule A, Service

Schedule B, and Service Schedule C of the Interchange Contract between the City of Tallahassee, Florida and Southern Companies dated December 15, 1980, as amended. Southern Companies are proposing to adopt marginal replacement fuel cost for use in generating unit dispatch. Marginal replacement fuel cost dispatch will only be implemented after it is accepted without refund obligation under all wholesale and retail rates of Southern Companies. Southern Companies request that the change in practice be allowed to become effective on August 1, 1990.

Comment date: June 22, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. New England Power Service Co.

[Docket No. ER95-598-007]

Take notice that on June 5, 1990, New England Power Service Company (NEP) tendered for filing its Compliance Refund Report pursuant Opinion No. 335 issued November 1, 1989.

Comment date: June 22, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Ogden Martin Systems of Fairfax, Inc.

[Docket No. EC90-13-000]

Take notice that on June 4, 1990, Ogden Martin Systems of Fairfax, Inc. ("Ogden Fairfax") filed a Petition with the Federal Energy Regulatory Commission (the "Commission"), for Authorization of Sale and Leaseback of Jurisdictional Facilities and for Declaratory Order with respect to Certain Related Matters pursuant to Section 203 of the Federal Power Act and Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, as follows:

1. authorizing a sale and leaseback financing (the "Lease Financing") of Ogden Fairfax's 72.5 MW municipal waste fired small power production facility (the "Facility");
2. disclaiming Commission jurisdiction over the legal owner and the beneficial owners of the Facility as a consequence of their participation in the Lease Financing;
3. confirming the continued applicability of Ogden Martin Systems of Fairfax, Inc., Rate Schedule FERC No. 1 to sales by Ogden Fairfax to Virginia Electric Power Company of electricity generated by the Facility after the completion of the proposed Lease Financing; and
4. determining that the change in ownership of the Facility effected by the Lease Financing will not result in a loss of its QF status.

Comment date: July 2, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Southern Company Services, Inc.

[Docket No. ER90-419-000]

Take notice that on June 1, 1990, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company ("Southern Companies"), tendered for filing a letter agreement changing a practice in the Unit Power Sales Agreements dated February 18, 1982 (without Savannah Electric and Power Company) and July 20, 1988 (including Savannah Electric and Power Company) and Service Schedule R to the Interchange Agreement dated October 18, 1979, as amended, between Florida Power & Light Company and Southern Companies (including Savannah Electric and Power Company). Southern Companies are proposing to adopt marginal replacement fuel cost for use in dispatch. Marginal replacement fuel cost dispatch will be implemented after it is accepted without refund obligation under all wholesale and retail rates of Southern Company.

Comment date: June 22, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Alabama Power Co.

[Docket No. ER90-415-000]

Take notice that on June 1, 1990, Alabama Power Company tendered for filing a letter agreement changing a practice in the Interconnection Agreement between Alabama Power Company and Alabama Electric Cooperative, Inc. dated May 5, 1980 and the Agreement for Transmission Service to Distribution Cooperative Members of Alabama Electric Cooperative, Inc. between Alabama Power Company and Alabama Electric Cooperative, Inc. dated August 28, 1980. Alabama Power Company, along with Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company ("Southern Companies"), is proposing to adopt marginal replacement fuel cost dispatch will only be implemented after it is accepted without refund obligation under all wholesale and retail rates of Southern Companies. Alabama Power Company requests that the amendment be allowed to become effective August 1, 1990.

Comment date: June 22, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power & Light Co.

[Docket No. ER90-399-000]

Take notice that on May 31, 1990, Florida Power & Light Company (FPL), tendered for filing a document entitled Florida-southern Interface Allocation Agreement among Florida Power & Light Company, Florida Power Corporation Jacksonville Electric Authority, and the City of Tallahassee, Florida (Agreement). FPL's filing includes a Certificate of Concurrence executed by "Florida Power Corporation" in lieu of an independent filing.

FPL states that the Agreement establishes limits on the contracting parties' rights to import power at the Florida Southern Interface by allocating the interface import capacity among the contracting parties.

FPL requests that waiver of Section 35.3 of the Commission's Regulations be granted and that the Agreement be made effective on June 1, 1990. FPL states that copies of the filing were served on Florida Power Corporation, Jacksonville Electric Authority, and the City of Tallahassee, Florida.

Comment date: June 22, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. Dayton Power and Light Co.

[Docket No. ER90-400-000]

Take notice that Dayton Power and Light Company (DP&L) on May 31, 1990, tendered for filing a proposed modification to the Interconnection Agreement dated as of May 10, 1972, between DP&L and the City of Piqua, Ohio (Piqua).

The proposed modification revises rates in existing rate schedules B, C, and D. There is no estimate of increased revenues since transactions will occur only as load and capacity conditions dictate. A June 1, 1990 effective date has been requested.

A copy of the filing was served upon Piqua and the Public Utilities Commission of Ohio.

Comment date: June 22, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. Georgia Power Co.

[Docket No. ER90-401-000]

Take notice that on June 1, 1990, Georgia Power Company (Georgia Power) tendered for filing proposed changes in its FERC Electric Tariff, Original Volume No. 1 (full requirements service). Based on the twelve-month period ending December 31, 1991, the proposed changes would be equivalent to a one-time rate increase to jurisdictional full requirements customers of approximately \$650,000.

Georgia Power's cost of service data allegedly supports a revenue increase of \$784,000 for the period ended December 31, 1989 (Period I). The filing represents a negotiated increase between Georgia Power and both of its jurisdictional customers and will be implemented by five annual 10% rate increases. The Agreement provides for the first increase to be effective January 1, 1991, and Georgia Power requests waiver of the Commission's notice requirements.

Georgia Power asserts that its costs have escalated steadily since the filing of its last full requirements rate case, resulting in a large increase in the revenue required from wholesale service. The data submitted with Georgia Power's filing allegedly demonstrate that current rates do not provide a fair return on Georgia Power's full requirements service.

Georgia Power states that it has served copies of the filing on its two full requirements customers.

Comment date: June 22, 1990, in accordance with Standard Paragraph E at the end of this notice.

9. Southern Company Services, Inc.

[Docket No. ER90-431-000]

Take notice that on June 1, 1990, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company ("Southern Companies"), tendered for filing a change in practice under Service Schedule A, Service Schedule B, and Service Schedule C of the Interchange Contract between Jacksonville Electric Authority and Southern Companies dated February 27, 1981, as amended. Southern Companies are proposing to adopt marginal replacement fuel cost for use in generating unit dispatch. Marginal replacement fuel cost dispatch will only be implemented after it is accepted without refund obligation under all wholesale and retail rates of Southern Companies. Southern Companies request that the change in practice be allowed to become effective on August 1, 1990.

Comment date: June 22, 1990, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Co.

[Docket No. ER90-389-000]

Take notice that on May 24, 1990, Northeast Utilities Service Company (NUSCO) as agent for the Connecticut Light and Power Company and Western Massachusetts Electric Company (collectively referred to as the "NU

Companies") tendered for filing a proposed rate schedule with respect to a Non-Firm Transmission Service Agreement, between NUSCO and the Massachusetts Municipal Wholesale Electric Company (MMWEC), dated July 12, 1989.

NUSCO states that this Agreement provides service to MMWEC for the transmission of purchases of interruptible electric system capacity and associated energy.

NUSCO requests that the Commission waive its filing requirements to the extent necessary to permit the rate schedule to become effective as of July 12, 1989.

NUSCO states that copies of the appropriate rate schedules have been mailed to MMWEC.

Comment date: June 22, 1990, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Public Service Corp.

[Docket No. ER90-437-000]

Take notice that on June 1, 1990, Wisconsin Public Service Corporation ("WPS") tendered for filing an executed Transmission Service Agreement and Supplement to that Agreement between WPS and Citizens Power and Light Corporation. The Agreement and Supplement provide for firm transmission service under the T-1 Transmission Tariff filed by WPS filed April 5, 1990, in Docket No. ER90-314-000.

WPS asks that the filing become effective as anticipated in the parties' Agreement and Supplement on June 1, 1990. Accordingly, waiver of notice is requested.

Comment date: June 22, 1990, in accordance with Standard Paragraph E at the end of this notice.

12. Mississippi Power Co.

[Docket No. ER90-436-000]

Take notice that on June 1, 1990, Mississippi River Company tendered for filing a change in practice under contract executed by South Mississippi Electric Power Association and Mississippi Power Company, dated November 12, 1970 for the furnishing and interchange of various services. The change in practice involves the use of marginal replacement fuel cost in lieu of blended replacement fuel cost in dispatching generating units on the Southern electric system, consisting of Mississippi Power Company, Alabama Power Company, Georgia Power Company, Gulf Power Company, Savannah Electric and Power Company and Southern Company Services, Inc.

Comment date: June 22, 1990, in accordance with Standard Paragraph E at the end of this notice.

13. Gulf Power Co.

[Docket No. ER90-410-000]

Take notice that on June 1, 1990, Gulf Power Company tendered for filing a Letter Agreement Changing a Practice in the Interconnection Agreement between Alabama Electric Cooperative, Inc. and Gulf Power Company and in the Agreement for Transmission Service to Distribution Cooperative Members of Alabama Electric Cooperative, Inc. dated August 1, 1985. Gulf Power Company, along with Alabama Power Company, Georgia Power Company, Mississippi Power Company and Savannah Electric and Power Company ("Southern Companies"), is proposing to adopt marginal replacement fuel cost for use in generating unit dispatch. Marginal replacement fuel cost dispatch will only be implemented after it is accepted without refund obligation under all wholesale and retail rates of Southern Companies. Gulf Power Company requests that the change in practice be allowed to become effective on August 1, 1990.

Comment date: June 22, 1990, in accordance with Standard Paragraph E at the end of this notice.

14. Gulf Power Co.

[Docket No. ER90-407-000]

Take notice that on June 1, 1990, Gulf Power Company tendered for filing a change in practice under the contract executed by the United States of America, Department of Energy, Acting by and through the Southeastern Power Administration and Gulf Power Company dated January 29, 1985. Gulf Power Company, along with Alabama Power Company, Georgia Power Company, Mississippi Power Company and Savannah Electric and Power Company ("Southern Companies"), is proposing to adopt marginal replacement fuel cost for use in generating unit dispatch. Marginal replacement fuel cost dispatch will only be implemented after it is accepted without refund obligation under all wholesale and retail rates of Southern Companies. Gulf Power Company requests that the change in practice be allowed to become effective on August 1, 1990.

Comment date: June 22, 1990, in accordance with Standard Paragraph E at the end of this notice.

15. Southern Company Services, Inc.

[Docket No. ER90-430-000]

Take notice that on June 1, 1990, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company ("Southern Companies"), tendered for filing a letter agreement amending a practice in the Unit Power Sales Agreements dated May 19, 1982 (without Savannah Electric and Power Company) and August 17, 1988 (including Savannah Electric and Power Company) and Service Schedule R to the Interchange Agreement dated February 27, 1981, as amended, between Jacksonville Electric Authority and Southern Companies (including Savannah Electric and Power Company). Southern Companies are proposing to adopt marginal replacement fuel cost for use in generating unit dispatch. Marginal replacement fuel cost dispatch will only be implemented after it is accepted without refund obligation under all wholesale and retail rates of Southern Companies. Southern Companies requests that the amendment be allowed to become effective on August 1, 1990.

Comment date: June 22, 1990, in accordance with Standard Paragraph E at the end of this notice.

16. Southern Company Service, Inc.

[Docket No. ER90-429-000]

Take notice that on June 1, 1990, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company ("Southern Companies"), tendered for filing a change in practice under the Amended and Restated Energy Purchase and Sale Agreement between Cajun Electric Power Cooperative, Inc., and Southern Companies, dated April 1, 1989. Southern Companies are proposing to adopt marginal replacement fuel cost for use in generating unit dispatch. Marginal replacement fuel cost dispatch will only be implemented after it is accepted without refund obligation under all wholesale and retail rates of Southern Companies. Southern Companies request that the change in practice be allowed to become effective on August 1, 1990.

Comment date: June 22, 1990, in accordance with Standard Paragraph E at the end of this notice.

17. Northeast Utilities Service Co.

[Docket No. ER90-390-000]

Take notice that on May 24, 1990, Northeast Utilities Service Company (NUSCO) as agent for the Connecticut Light and Power Company and Western Massachusetts Electric Company (collectively referred to as the "NU Companies") tendered for filing a proposed rate schedule with respect to a Transmission Service Agreement, between NUSCO and the Massachusetts Municipal Wholesale Electric Company (MMWEC), dated November 1, 1988.

NUSCO states that this Agreement provides service to MMWEC for the transmission of purchases of electric system capacity and associated energy.

NUSCO requests that the Commission waive its filing requirements to the extent necessary to permit the rate schedule to become effective as of November 1, 1988.

NUSCO states that copies of the appropriate rate schedules have been mailed to MMWEC.

Comment date: June 22, 1990, in accordance with Standard Paragraph E at the end of this notice.

18. Central Louisiana Electric Co., Inc.

[Docket No. ER90-397-000]

Take notice that on June 5, 1990, Central Louisiana Electric Company, Inc. (CLECO) tendered for filing an Amendment No. 2 to Rodemacher Unit No. 2 Transmission Service Agreement (Amendment to Exhibit V-A) (the Amendment) between CLECO and states that the Amendment amends CLECO's and LPPA's Exhibit V-A Transmission Service Agreement dated November 15, 1982 currently on file as CLECO's Rate Schedule FERC No. 51. The Amendment authorizes CLECO to provide a waiver with respect to CLECO's transmission of LPPA's Ownership Percentage of generation from Rodemacher Power Station Unit 2 and of Replacement Power and Energy to the Point of Interconnection on an annual basis. The amendment is proposed to become effective August 29, 1988, which is the date that the subject Amendment was executed by the parties to the Amendment.

CLECO requests that the Commission waive its filing requirements to the extent necessary to permit the Amendment to become effective as of August 29, 1988.

Comment date: June 22, 1990, in accordance with Standard Paragraph E at the end of this notice.

19. Southern Company Services, Inc.

[Docket No. ER90-420-000]

Take notice that on June 1, 1990, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company ("Southern Companies") tendered for filing a letter agreement amending a practice in the Unit Power Sales Agreement dated July 19, 1988 between Florida Power Corporation and Southern Companies. The Southern electric system is proposing to adopt marginal replacement fuel cost for use in generating unit dispatch. Marginal replacement fuel cost dispatch will only be implemented after it is accepted without refund obligation under all wholesale and retail rates of Southern Companies. Southern Companies request that the amendment be allowed to become effective on August 1, 1990.

Comment date: June 22, 1990, in accordance with Standard Paragraph E at the end of this notice.

20. Southern Company Services, Inc.

[Docket No. ER90-421-000]

Take notice that on June 1, 1990, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company ("Southern Companies"), tendered for filing a letter agreement amending a practice in Service Schedule E and Service Schedule F under the Interchange Contract dated December 22, 1988, as amended, between Florida power Corporation and Southern Companies. The Southern electric system is proposing to adopt marginal replacement fuel cost for use in generating unit dispatch. Marginal replacement fuel cost dispatch will only be implemented after it is accepted without refund obligation under all wholesale and retail rates of Southern Companies. Southern Companies request that the amendment be allowed to become effective on August 1, 1990.

Comment date: June 22, 1990, in accordance with Standard Paragraph E at the end of this notice.

21. Florida Power & Light Co.

[Docket No. ER90-433-000]

Take notice that on June 1, 1990, Florida Power & Light Company (FPL), tendered for filing an Amendment Number One to Short Term Agreement to Provide Power and Energy by Florida Power & Light Company to the City of Lake Worth, Florida.

Under Amendment Number One, FPL and the City of Lake Worth (Lake Worth) have agreed to revise and extend the term of the Short Term Agreement from May 31, 1990 through June 30, 1990 and to establish a maximum demand commitment of 30 MW. FPL respectfully requests that the proposed Amendment be made effective June 1, 1990. According to FPL, a copy of this filing was served upon the City of Lake Worth and the Florida Public Service Commission.

Comment date: June 22, 1990, in accordance with Standard Paragraph E end of this notice.

22. Southern Company Services, Inc.

[Docket No. ER90-424-000]

Take notice that on June 1, 1990, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company ("Southern Companies"), tendered for filing a change in practice under Service Schedule A, Service Schedule B, and Service Schedule C of the Interchange contract between Mississippi Power & Light Company and Southern Companies dated August 1, 1953, as amended. Southern Companies are proposing to adopt marginal replacement fuel cost for use in generating unit dispatch. Marginal replacement fuel cost dispatch will only be implemented after it is accepted without refund obligation under all wholesale and retail rates of Southern Companies. Southern Companies request that the change in practice be allowed to become effective on August 1, 1990.

Comment date: June 22, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 90-13881 Filed 6-14-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-120-002]

Chandeleur Pipe Line Co.; Proposed Changes in FERC Gas Tariff

June 8, 1990.

Take notice that Chandeleur Pipe Line Company, on June 6, 1990, tendered for filing proposed changes in its FERC Gas Tariff, Volume No. I. The tariff sheets filed are these:

Fifth Revised Sheet No. 9 Superseding Fourth Sheet No. 9 entitled "Special Rate Schedule T-1 Gas Transportation Agreement"
Second Revised Sheet No. 22 Superseding First Revised Sheet No. 22 entitled "Special Rate Schedule T-2 Gas Transportation Rate"

Chandeleur states that the tariff sheets reduce the rate to 26 cents per Mcf pursuant to the Commission's Opinion (50 FERC 61, 148) and Order in Rehearing (51 FERC 61, 152).

Chandeleur also states that copies of the filing were served upon the company's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 15, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 90-13882 Filed 6-14-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-259-030]

Northern Natural Gas Co.; Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

June 8, 1990.

Take notice that Northern Natural Gas Company, Division of Enron Corp., (Northern) on June 6, 1990, tendered for

filing proposed changes to its FERC Gas Tariff. Northern requests that the tariff sheets listed in Appendix A attached to the filing become effective on May 1, 1989 and the tariff sheets listed in Appendix B attached to the filing become effective on February 1, 1990, March 1, 1990 and July 1, 1990.

Northern states that the tariff sheets listed in Appendix A reflect the May 1, 1989 settlement rates approved by the Commission in its December 29, 1989 order and the tariff sheets listed in Appendix B contain certain minor corrections to Northern's tariffs.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.100). All such petitions or protests must be filed on or before June 15, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 90-13883 Filed 6-14-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-110-000]

Truckline LNG Co., Technical Conference

June 8, 1990.

Take notice that on May 2, 1990, Docket No. RP90-110-000 was noticed with comments due on May 10, 1990. On March 28, 1990, Trunkline LNG Company (TLC) filed a petition for authorization pursuant to sections 4, 8, and 9 of the Natural Gas Act to record deferred debits relating to a portion of its depreciation for periods in which its plant operations are suspended or partially suspended, and to amortize the account during the period following such suspension. Specifically, TLC has requested authority to record in Account No. 186, Miscellaneous Deferred Debits, the difference between depreciation accruals and the principal portion of the debt service recovered by TLC's minimum bill for the period in which

TLC's minimum bill is operative. TLC proposed to amortize the deferred debits in Account No. 186 to Account No. 426.5, Other Deductions, when TLC's tariff provides revenues for recovery of investment above the debt service level.

TLC stated in support that under the minimum bill provisions of its tariff, TLC recovers only its debt service and certain other non-equity related costs during the period in which operations are suspended, which commenced on August 1, 1984. Because of these provisions TLC has been unable, during the period of suspended operations, to obtain through rates the recovery of depreciation expense, which the Commission initially provided would be 5 percent, needed to return to TLC the investment in its plant. TLC stated that the purpose of this application is to permit deferred accounting of the differential between depreciation which is accrued and that which is being recovered while operations are suspended or at a minimum level. TLC states that the amortization of the deferred account would commence when the accumulated depreciation is equal to 95 percent of the gas plant in service, to be spread over the remaining life of the plant or at such other rate as may be authorized or permitted.

TLC further stated that the granting of this application will not change TLC's current revenue, nor those applicable to past periods.

The filing raises issues for which a technical conference is appropriate. A technical conference will be held at the Commission, 810 First Street, NE., Washington, DC 20426, to address the issues presented by TLC on June 18, 1990 at 1 p.m.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 90-13884 Filed 6-14-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 90-29-NG]

Victoria Gas Corp.; Application for Blanket Authorization To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application for Blanket Authorization to Import and Export Natural Gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on April 18, 1990, of an application filed by Victoria Gas Corporation (Victoria) for blanket authority to import and export up to 100

Bcf of natural gas from and to Canada and Mexico, over a two-year term beginning on the date of first delivery of the import or the export. Victoria would import or export Canadian, Mexican and domestically produced natural gas on a short-term or spot market basis for its own account or as agent on behalf of other suppliers and purchasers, including pipelines, local distribution companies, and commercial and industrial end-users. Victoria also contemplates acting as a facilitator for the importation of other natural gas supplies, acting as agent on behalf of both producers and purchasers.

Victoria anticipates utilizing existing pipeline facilities to transport the volumes to be imported and exported, and states it will submit quarterly reports detailing each transaction. The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., July 16, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Laraine A. Moore, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H-087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478.
Michael T. Skinner, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Victoria, a Texas corporation with its principal place of business in Houston, Texas, is a natural gas marketing company active in arranging the sale and transportation of domestic gas in U.S. markets. Victoria currently holds a two-year blanket authorization granted by the Economic Regulatory Administration (ERA) in DOE/ERA Opinion and Order No. 211 (Order 211) (1 ERA 70,742), issued December 17, 1987, in ERA Docket No. 87-48-NG, which authorizes Victoria to export up to 72 Bcf of domestically produced natural gas to Canada over a two-year period, beginning on the date

of first delivery. To date, Victoria has not started exporting any gas under Order 211. FE is issuing this notice in a new consolidating docket to avoid possible confusion caused by one applicant holding separate blanket import and export authorizations in different dockets at the same time for different terms, and to be consistent with its practice of allowing an importer or exporter to hold only one blanket import or export authority during any two-year term.

According to the application, the authority requested by Victoria contemplates the following types of import and export transactions: (1) Importation of supplies of Canadian and Mexican natural gas for consumption in U.S. markets; (2) importation of Canadian natural gas for eventual return (via export) to Canadian markets; (3) exportation of domestically produced natural gas for consumption in Canadian and Mexican markets; and (4) exportation of domestically produced gas for eventual return (via import) to U.S. markets. The specific terms of each import and export sale, including price and volumes would be negotiated on an individual basis.

In support of its application, Victoria submits that approval of its application will enable it to make available to spot market purchasers in Canada or Mexico supplies of United States natural gas for which there is no present national or regional U.S. need, or to serve those Canadian markets with natural gas produced in Canada and imported into the U.S. for the purpose of transporting such gas back into Canada. Victoria asserts that its proposed import/export arrangements are consistent with the DOE's policy of encouraging competitive and market-responsive pricing.

Victoria requests expedited treatment of its application to allow Victoria to address a rapidly changing market. An FE decision on Victoria's request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE

policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import and export authority. The applicant asserts that there is no current need for the domestic gas proposed to be exported, that this import/export arrangement will be competitive and therefore is in the public interest. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-

type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR section 590.316.

A copy of Victoria's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 11, 1990.
Clifford P. Tomaszewski,
Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.
 [FR Doc. 90-13919 Filed 6-14-90; 8:45 am]
 BILLING CODE 6450-01-M

Issuance of Decisions and Orders During Week of May 7 through May 11, 1990

During the week of May 7 through May 11, 1990 the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Glen Milner, 5/9/90, KFA-0151

Glen Milner filed an Appeal from a partial denial by the Authorizing Official of the Albuquerque Operations Office of a Request for Information that he submitted under the Freedom of the Information Act (FOIA). In considering the Appeal, the DOE determined that most of the material previously deleted

from the redacted copy of the document provided to Mr. Milner was properly redacted copy of the document provided to Mr. Milner was properly redacted copy of the document provided to Mr. Milner was properly classified and thus had been properly withheld under Exemption 1 of the FOIA. However, the DOE determined that certain information that was previously withheld could now be released. Accordingly, the Appeal was denied in part and granted in part.

Government Accountability Project, 5/9/90, KFA-0123

Government Accountability Project filed an Appeal from a partial denial by the Associate Deputy Assistant Secretary for Reactor Systems Development Technology, of a Request for Information that it submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE reviewed the classified status of the four documents at issue and determined that portions of each were properly classified and therefore properly withheld under Exemption 1 of the FOIA. However, the DOE remanded the non-classified portions of the documents to the Office of Nuclear Energy for review and a new determination regarding the segregability and releasability of any portions of the non-classified material.

Request for Exception

Mulgrew Oil Company, 5/9/90, LEE-0012

Mulgrew Oil Company filed an Application for Exception from the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm was not adversely affected by the reporting requirement in a way that was significantly different from the burden borne by similar reporting firms. Accordingly, exception relief was denied with respect to the filing of Form EIA-782B.

Refund Applications

American Red Ball Transit Co., White Star Trucking, Inc., 5/11/90, RF272-4842, RF272-6115, RD272-4842, RD272-6115

The Department of Energy issued a Decision and Order granting Applications for Refund filed by American Red Ball Transit Co. and White Star Trucking, Inc. in the DOE's Subpart V crude oil proceeding. In that Decision and Order, the DOE found that

the applicants were end-users of the refined petroleum products for which they sought refunds, in that they used the petroleum products in the course of their normal business activities as interstate truckers. Since these activities are not related to the petroleum industry, the applicants were presumed to have been injured by the crude oil overcharges. A consortium of 30 states and two territories (the States) filed objections and Motions for Discovery with respect to both applications. In its submissions, the States attempted to rebut the end-user presumption of injury. The DOE determined that the presumption was applicable to both applicants, and that the Motions for Discovery should be denied. The DOE further determined that refunds of \$17,518 and \$9,668 should be granted to American Red Ball and White Star respectively.

Atlantic Richfield Company/Great Valley Car Wash (Mr. Arthur Tillman), Great Valley Car Wash (Mrs. Grace Morris), 5/10/90, RF304-9070, RF304-11824

The DOE issued a Decision and Order granting a refund to Mrs. Grace Morris in the Atlantic Richfield Company (ARCO) special refund proceeding. Because Mr. Arthur Tillman had purchased the assets of Great Valley Car Wash from Mrs. Morris' late husband on November 1, 1978, he only would have been eligible to receive a refund for refined products purchases made after November 1, 1978. Great Valley made no purchases of refined products from ARCO after November 1, 1978, and therefore Mr. Tillman was not eligible for a refund in the ARCO proceeding. Mrs. Morris was determined to be the appropriate recipient of a refund for product purchased prior to November 1, 1978 and was granted a refund totalling \$1,116 including \$304 in accrued interest.

Black Butte Coal Co., et al., 5/10/90, RF272-7404 et al., RD272-7404 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by four coal mining companies in the Subpart V crude oil refund proceeding. Each applicant used refined petroleum products in the course of its business activities. The DOE found no support for the contentions of a group of States and Territories that the applicants had passed through the crude oil overcharges. Accordingly, the DOE decided that the applicants were entitled to rely upon the end-user presumption of injury in this proceeding. In addition, the DOE denied the States' Motions for Discovery regarding each

claimant. The total of the refunds granted was \$102,912.

C & K Coal Company et al., 5/9/90, RF272-32546 et al.

The DOE issued a Decision and Order granting, in part, four crude oil refund applications filed by C & K Coal Company (C & K). C & K requested a refund based on 95,408,618 gallons of refined petroleum products it used in its coal mining operations. A group of States objected to C & K's refund because they argued, C & K was not injured by crude oil overcharges. The States also submitted a Motion for Discovery. The DOE denied the Motion for Discovery, but requested additional information concerning C & K's ability to pass through increased fuel costs through contractual price escalator clauses. The DOE found that C & K had received compensation for the cost of 34,160,343 gallons of refined petroleum products through price escalator clauses in its sales contracts. Accordingly, the DOE determined that C & K was not injured in those instances and therefore it is ineligible to receive a refund for the purchases covered by such clauses. C & K was an end-user of the remaining 61,248,275 gallons of products it claimed, and was therefore presumed injured. The total refund granted in this Decision is \$48,999.

Caterpillar, Inc., 5/11/90, RF272-449, RD272-449

The Department of Energy (DOE) issued a Decision and Order granting a refund from crude oil overcharge funds to Caterpillar, Inc. based on its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Caterpillar is a manufacturer of earth-moving and construction machinery. The company used the petroleum products in its manufacturing operations, and determined its claim using actual purchase records and reasonable estimates. The applicant was an end-user of the products it claimed and was therefore presumed injured. A consortium of 28 states and two territories filed a Statement of Objections and a Motion for Discovery with respect to the applicant. The DOE found that the States' filing was insufficient to rebut the presumption of injury for end-users. The accompanying Motion for Discovery was also denied. Caterpillar's Application for Refund was granted. The total refund amount granted in \$101,070.

Exxon Corporation/J.T. & C.A. Thrift, Inc., 5/7/90, RF307-10122

The DOE issued a Supplemental Decision and Order in the Exxon

Corporation special refund proceeding regarding J.T. & C.A. Thrift, Inc. In *Exxon Corp./Younman's Gas & Oil Co.*, 20 DOE ¶ 85,224 (1990), the DOE granted a refund of \$6,400 to J.T. & C.A. Thrift, Inc. (Thrift). The DOE determined that the refund amount was miscalculated. Therefore, the refund amount previously granted was rescinded and the correct refund amount of \$5,224 (\$4,053 principal and \$1,171 interest) was granted.

Farmers Co-Op Association, 5/10/90, RF272-43405

The DOE issued a Decision and Order granting an Application for Refund filed in the crude oil special refund proceeding. The Applicant was an agricultural cooperative which sold \$4,511,367 gallons of petroleum products to its members. Although the co-op has gone out of business since filing its refund application, it certified that it would notify the former Chairman of its Board of Directors of its refund and that the refund would be passed through to its former members. The applicant was therefore granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the crude escrow account. The Decision granted the cooperative a \$3,609 refund.

Gulf Oil Corporation/D.C. McIntyre Distr., Inc., A.J. Hurt Jr., Inc., 5/9/90, RF300-6046, RF300-8772

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding on behalf of D.C. McIntyre Distr., Inc. (Case No. RF300-6046) and A.J. Hurt Jr., Inc. (Case No. RF300-8772). Both applicants were resellers and consignees. Each firm's combined allocable share as a reseller and as a consignee exceeded \$5,000. Therefore, under the presumptions of injury, each firm received \$5,000, plus accrued interest of \$2,031. The total refund granted in this Decision is \$14,062.

Gulf Oil Corporation/Dilday Premier Station, 5/7/90, RF300-8463

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding on behalf of Dilday Premier Station. The Application was approved using a presumption of injury. The total refund granted in this Decision is \$810.

Gulf Oil Corporation/Spartan Oil Co., 5/10/90, RF300-11121

The DOE issued a Supplemental Order revising the principal refund granted to Spartan Oil Co. to the sum of \$7,898.

Gulf Oil Corporation/Swords Service Center, 5/11/90, RF300-8611

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding on behalf of Swords Service Center. The Application was approved using a presumption of injury. The total refund granted in this Decision is \$1,624.

Haines & Kibblehouse, Inc., 5/9/90, RF272-425

The DOE issued a Decision and Order concerning an Application for Refund filed by Haines & Kibblehouse, Inc. in the Subpart V crude oil overcharge refund proceeding. Haines & Kibblehouse, Inc., a construction company, was an end-user of petroleum products during the price control period. The DOE found no support for the contentions of a group of U.S. States and Territories that the applicant had passed through the crude oil overcharges. The DOE decided that Haines & Kibblehouse, Inc. is entitled to rely on the end-user presumption of injury and was granted a total refund of \$8,277.

Hartz Mountain Corporation, 5/11/90, RF272-16588, RF272-16588, RF272-20225

The DOE issued a Decision and Order concerning two Applications for Refund filed in the crude oil fund being disbursed by the DOE under 10 CFR part 205, Subpart V. The DOE determined that the refund claims were meritorious and granted a refund of \$201,141. The DOE also denied a Motion for Discovery filed by a consortium of States and two Territories and rejected their challenge to the claim. The DOE denied the States' Objections, finding that the industry-wide econometric data submitted by the States did not rebut the presumption that the Applicant was injured by the crude oil overcharges.

Lukens Steel Company, 5/10/90, RF272-462, RD272-462

The Department of Energy (DOE) issued a Decision and Order granting a refund from crude oil overcharge funds to Lukens Steel Company (Lukens) based on its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The applicant used the products for its production of steel plate, and determined its claim using actual purchase records. The applicant was an end-user of the products it claimed and was therefore presumed injured. A consortium of 28 states and two territories filed a Statement of Objections and a Motion for Discovery with respect to the applicant. The DOE

found that the States' filing was insufficient to rebut the presumption of injury for end-users. The accompanying Motion for Discovery was also denied. Luken's Application for Refund was granted. The total refund amount granted is \$29,704.

Murphy Oil Corporation/Dahlke Oil Company, 5/10/90, RF309-445

The DOE issued a Decision and Order granting the Application for Refund of Dahlke Oil Company (Dahlke) in the Murphy Oil Corporation (Murphy) special refund proceeding. Dahlke is a Debtor-in-Possession under Chapter 11 of the U.S. Bankruptcy Code, and its application was submitted by the individual designated by the Bankruptcy Court to operate Dahlke. We determined that this individual was the proper party to direct the disposition of Dahlke's refund and, accordingly, Dahlke's refund was disbursed per his instructions. The total volume approved in this Decision was 845,259 gallons, and the total refund granted was \$878 (comprised of \$691 in principal and \$187 in interest).

Oil and Industry Suppliers, 5/11/90, RF272-510

The Department of Energy (DOE) issued a Decision and Order concerning an Application for Refund submitted by Oil and Industry Suppliers (OIS). OIS requested a refund based on its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981 pursuant to the provisions of 10 CFR part 205, subpart V, (subpart V). In this Decision, it was determined that OIS had previously waived its rights to a subpart V crude oil refund by participating in the Stripper Well Exemption Litigation, as a claimant in the Surface Transporters Escrow. Thus, OIS was ineligible to receive a refund in the subpart V crude oil refund proceedings and its Application for Refund was dismissed.

Reefer Express Lines Pty., Ltd., 5/7/90, RF272-27773, RD272-27773

Reefer Express Lines Pty., Ltd. (Reefer), a foreign flagship carrier, operating ocean-going vessels in the foreign commerce of the United States, filed an application for refund as an end-user of refined petroleum products in the subpart V crude oil refund proceeding. The Applicant certified, based on available records, that it purchased 99,184,087 gallons of petroleum products during the crude oil price control period. That figure included 12,756,708 gallons of petroleum products purchased in the Panama Canal Zone (PCZ). A group of state governments filed a statement of objection to Reefer's claim, and a related

motion for discovery. The States argued that Reefer should be denied a refund because: (1) Foreign firms were never intended to benefit under the DOE's price control program and, consequently, cannot claim refunds; (2) ocean carriers in foreign commerce conventionally added bunker fuel surcharges to their shipping tariffs to recoup increased fuel costs, and thus, were not injured as a result of crude oil overcharges; and (3) Reefer was not entitled to a refund with respect to bunker fuel purchased in the PCZ. In accordance with its decision in *Christian Haaland A/S*, 19 DOE ¶ 85,191 (1989), the DOE determined, that the States' reading of the DOE's price control program was incorrect, and that policy considerations underlying the program were contrary to the States' claim that the foreign flagship carriers are ineligible to receive refunds for these purchases. Accordingly, the DOE rejected the States' claim that Reefer should be denied a refund by virtue of its foreign ownership. The DOE found equally without basis the States' allegations regarding the passthrough of costs by foreign ocean carriers. It found, that to a substantial degree, foreign ocean carriers were not automatically able to pass through increased bunker fuel costs to their customers. The DOE concurred with the States' position that Reefer should not receive funds with respect to any purchases made in the Panama Canal Zone, because the DOE price regulations did not apply to sales there. Therefore, the DOE reduced Reefer's total claim by the 12,756,708 gallons of petroleum products it had purchased in the PCZ. The DOE determined that Reefer was an end-user of the remaining 86,427,379 gallons of petroleum products it claimed, and was, therefore, presumed injured. The amount of the refund granted in this Decision is \$69,142. The States' motion for discovery was denied.

Shell Oil Company/A.J. Ataie/A. Badiozaman, 5/11/90, RF315-9957

The DOE issued a supplemental order rescinding a \$688 duplicate refund check that was mistakenly issued to A.J. Ataie and A. Badiozaman in the Shell Oil Company Special refund proceeding.

Shell Oil Company/Lemmen Pontiac et al., 5/7/90, RF315-2205 et al.

The DOE issued a Decision and Order granting 63 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the applicants submitted one or more applications and the total gallonage of each applicant's claims exceeded 22,126,106 gallons of petroleum products purchased directly

from Shell. Accordingly, each applicant was granted a refund equal to \$5,000 or 40% of its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. One applicant, an end-user, was granted its full volumetric share. The sum of the refunds granted in the Decision was \$117,705 (\$93,953 principal plus \$23,752 interest).

Shell Oil Company/William Gallagher, Pinzone-Armbruster, Inc. 5/10/90, RF315-6079, RF315-9958

The DOE issued a supplemental order rescinding a \$901 refund that was issued to Pinzone-Armbruster, Inc. in a June 20, 1989, Decision and Order. *Shell Oil Company/Bowman's Shell Service*. The DOE determined that the rightful recipient of that refund was William Gallagher, the owner of the station in question during the price-control period. In 1982, Gallagher sold his station to Pinzone-Armbruster. Because the sale was a sale only of assets, Pinzone was not entitled to the Shell refund. Accordingly, William Gallagher received a refund of \$967, representing \$772 in principal and \$195 in interest, and Pinzone-Armbruster's \$901 refund check was rescinded.

Texaco Inc./Ciruli Oil Co., 5/11/90, RF321-67, RF321-115

The DOE issued a Decision and Order denying duplicate refund applications from the Texaco Inc. consent order fund filed by Ciruli Oil Co. The applicant filed two refund applications for the same Texaco purchases. In both applications, the applicant certified that it had filed or authorized the filing of only one refund application in the Texaco refund proceeding. In view of this false certification, the DOE determined that both refund applications should be denied.

Texaco Inc./Four Season's Texaco, 5/11/90, RF321-3291, RF321-3586

The DOE issued a Decision and Order denying duplicate refund applications from the Texaco Inc. consent order fund filed by Four Seasons's Texaco. In the latter application, the applicant certified that it had filed only one refund application in the Texaco refund proceeding. However, the applicant had filed another application two days earlier. In view of this false certification, the DOE determined that both refund applications should be denied.

Texaco Inc./Gene's Northside Texaco, Texaco Inc./Gene's Texaco, 5/11/90, RF321-2934, RF321-3590

The DOE issued a Decision and Order denying duplicate refund applications

from the Texaco Inc. consent order fund filed under the names Gene's Northside Texaco and Gene's Texaco. In the latter application, the applicant certified that it had filed only one refund application in the Texaco refund proceeding. However, the applicant had filed another application nine days earlier. In view of this false certification, the DOE determined that both refund applications should be denied.

Texaco Inc./Jamison Texaco, 5/11/90, RF321-1091, RF321-1636

The DOE issued a Decision and Order denying duplicate refund applications from the Texaco Inc. consent order fund filed by Jamison Texaco. On March 9, 1990, the applicant filed its first application. Four days later, Energy Refunds, Inc. filed another application on behalf of Jamison Texaco for the same purchases. In both applications, the applicant certified that it had filed or authorized the filing of only one refund application in the Texaco refund proceeding. In view of this false certification, the DOE determined that both refund applications should be denied.

Texaco Inc./Lizzi Bros. Texaco, 5/9/90, RF321-623, RF321-3614

The DOE issued a Decision and Order denying duplicate refund applications from the Texaco Inc. consent order fund filed by Lizzi Bros. Texaco. Since the applicant's first application was signed prior to the issuance of the Decision and Order implementing refund procedures in the Texaco proceeding, the applicant was required by the Decision to recertify its application. The applicant filed a recertification on April 2, 1990. Ten days later it filed another application which certified that it had filed only one refund application in the Texaco refund proceeding. In view of the false certification, the DOE determined that both refund applications should be denied.

Texaco Inc./University Texaco, 5/11/90, RF321-1433, RF321-1821

The DOE issued a Decision and Order denying duplicate refund applications from the Texaco Inc. consent order fund filed by University Texaco. On March 9, 1990, the applicant filed its first application. Five days later, Energy Refunds, Inc. filed another application on behalf of University Texaco for the same purchases. In both applications, the applicant certified that it had filed or authorized the filing of only one refund application in the Texaco refund proceeding. In view of this false certification, the DOE determined that both refund applications should be denied.

The True Companies/T&T Gas Products, Company, 5/11/90, RR195-2

The DOE considered a Motion for Reconsideration filed by the T&T Gas Products Company in the True Companies refund proceeding. The DOE had originally granted T&T a refund of \$5,000 based on the volumetric presumption of overcharge and on the small claims injury presumption of overcharge and on the small claims injury presumption. In its Motion T&T attempted to prove that it experienced injury greater than that level as a result of its purchases of True propane. In the Motion T&T also stated that the transactions involving the True propane were actually exchange transactions. Pointing out that exchange transactions are different from ordinary sales, the DOE found that there was no basis for presuming that any particular level of overcharge occurred. Since T&T failed to establish the likelihood of any overcharge or other alleged violation took place in connection with the exchange transactions, its Motion for Reconsideration was denied. The DOE did not, however, require T&T to return the refund that it had been granted.

Washington Leasing, Inc., 5/7/90, RF272-26805

The DOE issued a Decision and Order granting Washington Leasing, Inc.'s Application for Refund in the Subpart V Crude Oil refund proceeding, based on its purchases of refined petroleum products between August 19, 1973, and January 27, 1981. Washington Leasing, Inc. paid for all of the petroleum products claimed in its application and the lessees of its vehicles were not assessed a specific fuel charge, as opposed to customers of some rental car companies. Therefore, Washington Leasing, Inc. was found to be an end-user of the petroleum products forming the basis of its application and was granted a refund equal to its volumetric share of the available crude oil monies. The total volume approved in this Decision was 5,733,172 gallons, and the total refund granted was \$4,587.

Refund Applications

The Office of Hearings and Appeals granted refunds to refund applicants in the following Decisions and Orders:

Name	Case No.	Date
Adams Construction Co. et al.	RF272-17935	5/9/90
Atlantic Richfield Co./Ferrellgas, Inc. et al.	RF304-4026	5/7/90

Name	Case No.	Date
Atlantic Richfield Co./Jim's Atlantic Station et al.	RF304-5950	5/11/90
Atlantic Richfield Co./Public Service Electric & Gas Co. Madison Water Utility.	RF304-6891	
Wolf Creek Highway Water District.	RF304-6891	
Atlantic Richfield Co./Seattle Metro et al.	RF304-9106	5/11/90
Central Paving Co. et al.	RF304-7516	5/11/90
Citrus World, Inc.	RF272-25929	5/10/90
Exxon Corp./International Fueling Co., Inc.	RF272-429	5/7/90
Exxon Corp./Northwest Orient Airlines.	RF307-9989	5/10/90
Pan American World Airways.	RF307-6209	
Japan Airlines Co., Ltd.	RF307-8709	
Exxon Corp./Trans World Airlines, Inc.	RF307-8951	5/10/90
Ozark Airlines, Inc.	RF307-5727	
Gulf Oil Corp./Alexander Oil Co.	RF307-5728	5/11/90
Gulf Oil Corp./Cash Oil Co.	RF300-5039	5/11/90
Gulf Oil Corp./Edmond's Gulf et al.	RF300-5248	5/7/90
Gulf Oil Corp./L.D. Rhodes Oil Co.	RF300-8817	5/9/90
Gulf Oil Corp./Larow's Citgo.	RF300-11117	5/10/90
Piker's Gulf.	RF300-3653	5/7/90
Gulf Oil Corp./Sims Gulf.	RF300-7421	
Hagler's Gulf.	RF300-463	
Tex-Pack Express of Dallas.	RF300-10035	
Gulf Oil Corp./Taylor & Murphy, Inc.	RF300-10254	5/11/90
Gulf Oil Corp./W.W. Long.	RF300-10146	5/9/90
Gulf Oil Corp./Wells Oil Co.	RF300-9363	5/7/90
Jesse Easterling.	RF300-9260	5/9/90
Green Bay Metropolitan Sewerage District.	RF272-1393	
City of Dickson Electric Department.	RF272-1480	
Murphy Oil Corp./Radcliffe Materials et al.	RF272-1503	5/11/90
Murphy Oil Corp./Woodham's Spur et al.	RF309-176	5/10/90
Shell Oil Co./George M. Sharp, Jr. et al.	RF309-1392	5/9/90
South Norwalk Electric Works.	RF315-9400	5/9/90
State of West Virginia.	RF272-9448	5/9/90
City of San Diego.	RF272-0512	
City of San Antonio.	RF272-1191	
	RF272-1414	5/11/90

Dismissals

The Following submissions were dismissed:

Name	Case No.
Ames Department Stores, Inc.	RF272-36801
Big D Oil Company	RF300-9878

Name	Case No.
Columbus Avenue Service Station....	RF315-1628
Dan's Shell West Hartford, Inc. et al (see attached list).	RF315-58
Hethcoat's Gulf.....	RF300-11028
Lowery Trucking.....	RF310-260
Mac's Gulf.....	RF300-11020
Murray's Shell Service.....	RF315-1438
Murray's Sunland Service.....	RF307-9441
Reagle's West End Exxon.....	RF307-9417
Vicksburg Shell Service.....	RF315-1432
Whiteford's Exxon.....	RF307-9432

Appendix

RF315-58, Dan's Shell West Hartford, Inc.
 RF315-67, Doug Lathem
 RF315-85, Bucaro Shell
 RF315-93, Carl Collard
 RF315-98, Richard Gutierrez
 RF315-108, Bernard's Shell
 RF315-110, Ange's Town & Country Shell
 RF315-135, Harold Baumgardner
 RF315-144, Dan Bohan
 RF315-146, Bob's Moravian Shell
 RF315-251, L&S Shell Auto Care
 RF315-262, Lincoln Plaza Shell
 RF315-263, Lindsay's Shell
 RF315-265, H.E. Richmond Shell Service
 RF315-292, Hanna's Shell Service
 RF315-296, Ioannis Patelakis
 RF315-312, Gaines Oil, Inc.
 RF315-341, Marketown Shell Service
 RF315-342, Marvin Shell
 RF315-346, Jack's Shell Service
 RF315-361, John Kodiak Shell Service
 RF315-362, Hill's Shell Service, Inc.

RF315-368, Lima Mall Shell
 RF315-373, Glen Gorman
 RF315-374, Glen Gorman
 RF315-378, Robert Georgantas
 RF315-935, Shep's Shell Service
 RF315-948, Rogers' Shell Service
 RF315-964, Slater Shell Service
 RF315-972, Smittys Shell Service
 RF315-973, Vaughn Shell
 RF315-986, Tom Shell Service
 RF315-994, Sugar Hill Shell
 RF315-1002, Shelley's Shell Service
 RF315-1008, Santa Maria Broadway Shell

RF315-1011, S&D Shell
 RF315-1014, Rose Garden Shell
 RF315-1315, Abington Super Shell
 RF315-1318, Don & Jesse Shell Service, Inc.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: June 6, 1990.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 90-13916 Filed 6-14-90; 8:45 am]

BILLING CODE 8450-01-M

Office of Hearing and Appeals

Cases Filed During the Week of May 11 Through May 18, 1990

During the Week of May 11 through May 18, 1990, the appeals and applications for exception or other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: June 6, 1990.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 11 through May 18, 1990]

Date	Name and Location of Applicant	Case No.	Type of Submission
April 4, 1990	Gulf/Art's Gulf, Las Vegas, NV	RR300-10	Request to modification/recission in the Gulf refund proceeding. If granted: The April 13, 1990 Decision and Order (Case No. RF300-10264) issued to Art's Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
May 7, 1990	National Helium, Belridge, Palo Pinto, MA	RM2-199, RM8-200, RM5-201	Request to modification/recission in the National Helium Belridge, Palo Pinto second stage refund proceeding. If granted: The July 8, 1988 Decision and Order (Case No. RQ2-444, RQ8-445, RQ5-446) would be modified regarding the state's application for refund submitted in the National Helium, Belridge & Palo Pinto second stage refund proceeding.
May 11, 1990	Amoco II et al/Texas, Austin, TX	RM251-183, et al.	Request to modification/recission in the Amoco II second stage refund proceeding. If granted: The April 6, 1988 Decision and Order (Case No. RQ21-420, RQ23-421, RQ1-423, RQ10-424, RQ13-425, RQ2-426, RQ183-427, RM21-96, RM8-97, RM5-98, RM31-99, RM33-100, RM35-101, R32-102, RM34-103) issued to Texas would be modified regarding the state's application for refund submitted in the Amoco II et al second stage refund proceeding.
May 14, 1990	Committee to Bridge The Gap, Los Angeles, CA	KFA-001	Appeal of an information request denial. If granted: The Committee to Bridge the Gap would receive access to a copy of the draft DOE Order 1700.1.
May 15, 1990	Amoco I, Belridge/Maryland, Baltimore, MD	RM21-202, RM8-203	Request to modification/recission in the Amoco I & Belridge refund proceeding. If granted: The April 20, 1990 Decision and Order (Case No. RM21-176, RM8-1775, Issued to Maryland would be modified regarding the state's application for refund submitted in the Amoco I & Belridge second stage refund proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of May 11 through May 18, 1990]

Date	Name and Location of Applicant	Case No.	Type of Submission
May 17, 1990	Texaco/Riggs Texaco Zanesville, OH	RR321-1	Request to modification/recission in the Texaco refund proceeding. If granted: The April 26, 1990 Decision and Order (Case No. RF321-1790) issued to Riggs Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.

REFUND APPLICATIONS RECEIVED

Date Received	Name of Refund Proceeding/Name of Refund Application	Case Number
3/14/89	Worley & Obetz	RF304-11836.
5/10/90	Bill's River Service	RF309-1402.
5/11/90 thru 5/18/90	Texaco Oil refund applications received	RF321-5124 thru RF321-5476.
5/11/90 thru 5/18/90	Crude Oil refund applications received	RF272-78614 thru RF272-78626.
5/11/90 thru 5/18/90	Gulf Oil refund applications received	RF300-11123 thru RF300-11131.
5/15/90	Kneller's Arco	RF304-11834.
5/15/90	Famland Industries, Inc.	RF304-11835.
5/15/90	James Marvin Francis	RF315-9960.
5/16/90	Roy's Shell	RF315-9961.
5/18/90	Valentine's Spur	RF309-11130.
5/18/90	Town & Country Car Wash, Inc.	RF315-9962.

[FR Doc. 90-13914 Filed 6-14-90; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Irrigation Efficiency Program; Notice of Cooperative Agreement

AGENCY: Western Area Power Administration, DOE.

ACTION: Irrigation Efficiency Program, Notice of Proposed Cooperative Agreement

SUMMARY: The Department of Energy announces their intent, pursuant to 10 CFR 600.7(b), to renew the cooperative agreement with the Colorado State Soil Conservation Board (CSSCB) to manage the irrigation efficiency testing program for the State of Colorado. This noncompetitive agreement will be increased in effort and in funds to continue the testing and promotion of energy efficient irrigation practices.

ADDRESSES: Requests for further information should be submitted to the following address: Ms. Peggy Plate, Conservation Specialist, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, (303) 490-7227.

SUPPLEMENTAL INFORMATION: In 1981, the Western Area Power Administration (Western) initiated a Conservation and Renewable Energy (C&RE) Program. Among the various program activities is an Irrigation Pump Testing and Equipment Loan Program with Western's customers. The Loveland Area Office has been working with the

CSSCB to mutually benefit the State and the Federal Government by improving end-users' pump efficiencies and agricultural practices. Western's goals include the efficient utilization of energy resources and support programs such as this through its C&RE Program. The CSSCB is committed to the economic success of agriculture in its State and is in the best position to manage this program. The CSSCB and the United States Department of Agriculture's Soil Conservation Service have worked with local soil conservation districts in irrigation and water efficiency programs and will provide expertise and training to CSSCB personnel hired to fulfill the objectives of this program.

SOLICITATION NO: DE-FC65-86-WP16209.

SCOPE OF PROJECT: The Irrigation Efficiency Program is designed to develop and implement an efficiency testing activity within the State of Colorado. The program will include an appropriate management plan for the continuation of the program, data collection and reporting responsibilities, and coordination of those activities with other agencies involved in energy conservation such as area utilities and statewide organizations.

Issued at Golden, Colorado, June 7, 1990.

William H. Clagett,
Administrator.

[FR Doc. 90-13917 Filed 6-14-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3788-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 28, 1990 through June 1, 1990, pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act, as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the Federal Register dated April 13, 1990 (55 FR 13949).

Draft EISs

ERP No. DS-AFS-K61092-CA, Rating EC2, Mt. Shasta Ski Area Development, Selecting National Forest System Land for Alpine Skiing, Implementation, Siskiyou County, CA.

Summary

EPA expressed continuing concerns with indirect and cumulative impacts from induced growth on private land and the potential impact of the proposed action on water quality and wetlands. EPA expressed environmental concerns with two alternatives and environmental objections with the remaining alternatives and encouraged the Forest Service to analyze

development plans for an alternative site to reduce environmental impacts.

ERP No. D-FHW-F40308-MI, Rating EC2, U.S. 131 Improvement and Relocation, South of Cadillac to North of Manton, Funding and Section 404 Permit, Wexford County, MI.

Summary

EPA expressed concerns about wetland and noise impacts. EPA believes that information is needed regarding project design changes to lessen wetland impacts, the wetlands mitigation plan, and noise abatement measures.

ERP No. D-FHW-L40173-WA, Rating EO2, WA-509/East-West Corridor Improvements or Relocation, I-705 to East 11th Street and Marine View Drive, Funding, U.S. Coast Guard Section 9, and U.S. COE Sections 10 and 404 Permits, City of Tacoma, Pierce County, WA.

Summary

EPA expressed environmental objections to both action alternatives because they would result in exceeding the carbon monoxide national ambient air quality standard. EPA requested additional information on effects to Superfund sites in the area, mitigation for air quality effects, and wetland mitigation planning.

Final EISs

ERP No. F-UAF-G11016-NM, Cannon Air Force Base Realignment, Implementation, 27th Tactical Fighter Wing, Mount Dora Military Operations Area, Melrose Range, Curry County, NM.

Summary

EPA has no objection to the proposed action as described.

Dated: June 12, 1990.
William D. Dickerson,
Deputy Director, Office of Federal Activities.
[FR Doc. 90-13956 Filed 6-14-90; 8:45 am]
BILLING CODE 6560-50-M

[ER-FRL-3788-2]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed June 4, 1990 Through June 8, 1990 Pursuant to 40 CFR 1506.9.

EIS No. 900192, Final, FHW, KY, OH, US 27/Central Bridge and Approach Roads Replacement, Newport, NY to Cincinnati, OH, Ohio River, Funding and

404 Permit, Campbell County, KY and Hamilton County, OH, Due: July 16, 1990, Contact: Robert E. Johnson (502) 227-7321.

EIS No. 900193, Draft, FHW, VA, Madison Heights Bypass/U.S. 29 Construction, U.S. 50, South of City of Lynchburg to U.S. 29 South of Town of Amherst, Funding and COE Permit, Amherst and Campbell Counties, VA, Due: July 30, 1990, Contact: James M. Tumlin (804) 771-2371.

EIS No. 900194, Draft, BLM, CA, California Desert Conservation Area, Common Raven Comprehensive Management Plan, Implementation, CA, Due: August 1, 1990, Contact: Barbara Maxfield (714) 276-6402.

EIS No. 900195, Final, AFS, ID, Warm Lake Complex Fire Recovery Project, July Thru August 1989 Warm Lake Complex Fires, Implementation, Boise National Forest, Cascade Ranger District, Valley County, ID, Due: July 16, 1990, Contact: Dan Deiss (208) 364-4100.

EIS No. 900196, Draft, FHW, MO, Page Avenue Extension, Bennington Place, Crossing the Missouri River Bridge to I-70 or U.S. 40, Funding, COE Section 404 Permit and Coast Guard Bridge Permit, St. Louis and St. Charles Counties, MO, Due: August 1, 1990, Contact: Robert G. Anderson (314) 636-7104.

EIS No. 900197, Draft, BLM, CA, Ward Valley Low-Level Radioactive Waste Disposal Facility, Site Selection, Construction and Operation, Funding and Right-of-Way, Grants, San Bernardino County, CA, Due: August 15, 1990, Contact: Darice Bailey (916) 445-0498.

EIS No. 900198, Draft, MMS, AK, Norton Sound Outer Continental Shelf (OCS) Lease Sale, Placer Mining Program, New and Updated Information, AK, Due: July 30, 1990, Contact: George Valiulis (703) 787-1662.

EIS No. 900199, Final, AFS, WA, Mount Baker-Snoqualmie National Forest, Land and Resource Management Plan, Implementation, King, Pierce, Skagit, Snohomish and Whatcom Counties, WA, Due: July 16, 1990, Contact: Robert Dunblazier (206) 442-4888.

EIS No. 900200, Final, USA, TX, NJ, SC, KY, VA, MO, Fort Dix Army Base Realignment, Training and Doctrine Command Installations Transfer to other installations including Forts Bliss, Jackson, Knox, Lee, and Leonard Wood, Implementation, TX, NJ, SC, KY, VA and MO, Due: July 16, 1990, Contact: Richard Muller (804) 441-7776.

Dated: June 12, 1990.

William D. Dickerson,
Deputy Director, Office of Federal Activities.
[FR Doc. 90-13957 Filed 6-14-90; 8:45 am]
BILLING CODE 6560-50-M

[FRL-3788-3]

Open Meeting on July 18 and 19, 1990: State and Local Programs Committee of the National Advisory Council for Environmental Policy and Technology

Under Public Law 92-463 (the Federal Advisory Committee Act), the U.S. Environmental Protection Agency (EPA) gives notice of a meeting of the State and Local Programs Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT). The meeting will be held at the Hotel Washington, 15th and Pennsylvania Ave., NW., Washington, DC 20004, on Wednesday, July 18, from 1:30 p.m. to 5 p.m. and Thursday, July 19, from 9 a.m. to 4:30 p.m.

The meeting will serve as a forum for information sharing and decision making related to issues the members of the State and Local Programs Committee want to address over the next several months. These issues include: the relationship between State governments and the EPA, the involvement of State governments in the EPA's strategic planning process, and the implications for local governments of Federal environmental regulations.

Members of the public wishing to make comments are invited to submit them in writing by July 11 to Donna Fletcher, Staff Director of the State and Local Programs Committee, USEPA (A-101F6), 499 South Capitol St., Washington, DC 20460. The meeting will be open to the public. Additional information may be obtained from Ms. Fletcher by writing to her at the above address or by calling her at (202) 245-3883.

Dated: June 5, 1990.
Robert Hardaker,
Designated Federal Official, NACEPT.
[FR Doc. 90-13933 Filed 6-14-90; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and

approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request to extend, for a three-year period, its approval of the information collection identified below. There is no change in the method or substance of the collection.

Type of Review: Extension of expiration date without any change in substance or method of collection.

Title: Application for Consent to Effect a Merger-Type Transaction.

Form Number: FDIC 6220/01.

OMB Number: 3064-0016.

Expiration Date of OMB Clearance: September 30, 1990.

Frequency of Response: On occasion.

Respondents: Insured banks wishing to effect a merger-type transaction.

Number of Respondents: 120.

Number of Responses Per Respondent: 1.

Total Annual Responses: 120.

Average Number of Hours Per Response: 74.

Total Annual Burden Hours: 8,800.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Management and Budget, Paperwork Reduction Project (3064-0075), Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898-3907, Office of the Executive Secretary-Room F-451, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on these collections of information are welcome and should be submitted before August 14, 1990.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above.

Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) requires an insured depository institution wishing to merge or consolidate with any other insured depository institution or noninsured bank or institution or, either directly or indirectly, acquire the assets of, or assume liability to pay any deposits made in any other insured depository institution or noninsured bank or institution, to apply to the responsible regulatory agency for approval. If the resulting institution is an

insured nonmember bank the responsible agency is the FDIC.

Dated: June 11, 1990.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90-13897 Filed 6-15-90; 8:45 am]

BILLING CODE 6714-01-M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request to extend, for a three-year period, its approval of the information collection identified below.

Type of Review: Extension of expiration date without any change in substance or method of collection.

Title: Capital Adequacy Plan.

Form Number: None.

OMB Number: 3064-0075.

Expiration Date of OMB Clearance: August 31, 1990.

Frequency of Response: On occasion.

Respondents: Insured state nonmember banks that do not meet minimum capital standards.

Number of Respondents: 24.

Number of Responses Per Respondent: 1.

Total Annual Responses: 24.

Average Number of Hours Per Response: 41.7.

Total Annual Burden Hours: 1,000.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Management and Budget, Paperwork Reduction Project (3064-0075), Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898-3907, Office of the Executive Secretary-Room F-451, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on these collections of information are welcome and should be submitted before August 14, 1990.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above.

Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Under 12 CFR part 325, insured state nonmember banks must maintain primary and total capital ratios of at least 5.5 and 6 percent respectively. When a bank's capital falls below those levels, the institution must develop a written capital plan which describes the means and timing by which the bank will achieve the minimum capital requirements.

Dated: June 11, 1990.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90-13898 Filed 6-14-90; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL HOME LOAN MORTGAGE CORPORATION

Notice of Withdrawal of Prior Notice Regarding Providing Information Concerning Organization, Rules and Access to Records

On January 27, 1977, pursuant to the Freedom of Information Act, 5 U.S.C. 552, the Federal Home Loan Mortgage Corporation ("Freddie Mac"), published a Notice Providing Information Concerning Organization, Rules and Access to Records in the Federal Register. See 42 FR 5126 (1977); see also 41 FR 30721 (July 26, 1976) (prior, superseded notice). Freddie Mac was subject to the Freedom of Information Act as a "Government controlled corporation." 5 U.S.C. 552(f). This Notice supersedes the Notice on this subject which appears at 42 FR 5126.

Pursuant to the requirements of the Financial Institution Reform, Recovery, and Enforcement Act of 1989, Public Law 101-73, 103 Statutes at Large 183 (August 9, 1989), Freddie Mac stockholders elected a new board of directors on February 6, 1990, and ceased to be a Government controlled corporation subject to the Freedom of Information Act. Therefore, the legal basis of Freddie Mac's 1977 Notice Providing Information Concerning Organization, Rules and Access to Records also ceased to exist on February 6, 1990. Accordingly, the 1977 Notice became ineffective on February 6, 1990. Notice of withdrawal of the 1977 Notice is hereby given.

Dated: June 12, 1990.

Alan Hausman,

Assistant Secretary.

Gary M. Lanzara,

Certifying Officer.

[FR Doc. 90-13962 Filed 6-14-90; 8:45 am]

BILLING CODE 6719-01-M

FEDERAL MARITIME COMMISSION**Notice of Agreement(s) Filed**

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011284

Title: Equipment Interchange Discussion Agreement.

Parties: A.P. Moller-Maersk Line, Nippon Yusen Kaisha Line, P & O Containers Limited, Sea-Land Service, Inc., Hapag-Lloyd Aktiengesellschaft, Orient Overseas Container Lines.

Synopsis: The proposed Agreement authorizes the parties to discuss and agree upon matters in the trade between the U.S. and foreign countries pertaining to the interchange of carrier equipment with shippers and/or consignees, which affect the rates, charges or other terms of transportation made available to shippers or consignees, including, but not limited to, insurance terms, liability for loss or damage, maintenance and repair and free time and detention charges. The parties have no obligation under this Agreement, other than voluntarily, to adhere to any consensus or agreement reached. The parties have requested a shortened review period.

Agreement No.: 232-011285

Title: Navinter/Safbank Vessel/Space, Charter Agreement.

Parties: The Safbank Line Limited, Empresa de Navegacao Internacional.

Synopsis: The proposed Agreement provides that Safbank may charter up to three vessels at any one time, with capacity of up to 2,000 TEUs to Navinter, and Safbank and Navinter may cross-charter space on each other's vessels.

Agreement No.: 217-011286

Title: American Transport Line, Ltd. and Lykes Bros. Steamship Co., Inc., Space Charter Agreement.

Parties: American Transport Line, Ltd., Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed Agreement would promote efficient utilization of the parties' vessels and equipment by chartering available space on vessels operated by each party in the trade between Europe and the United States.

By Order of the Federal Maritime Commission.

Dated: June 11, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-13870 Filed 6-14-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

[File No. 892 3125]

The Vons Companies, Inc.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Mich. based corporation that operates grocery stores in Calif. and Nev. from misrepresenting the extent to which any food contains pesticides and from making any representation concerning the presence of health effects of any pesticide applied to or present in any food, unless respondent possesses and relies upon competent and reliable scientific evidence substantiating such representation.

DATES: Comments must be received on or before August 14, 1990.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld, San Francisco Regional Office, Federal Trade Commission, 901 Market St., suite 570, San Francisco, CA 94103. (415) 744-7920.

SUPPLEMENTARY INFORMATION: Pursuant to section 9(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty

(60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(11)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Vons Companies, Inc. ("Vons" or "respondent"), a corporation, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

It is hereby agreed by and between Vons, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal place of business located at 10510 Lower Azusa Road, El Monte, California 91731.
2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.
3. Proposed respondent waives:
 - a. Any further procedural steps;
 - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusion of law;
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and
 - d. All claims under the Equal Access to Justice Act.
4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft or complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.
5. This agreement is for settlement purposes only and does not constitute

an admission by the proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

It is Ordered, That respondent Vons Companies, Inc., a corporation, its successors and assigns, and its officers, and respondent's representatives, agents and employees, directly or through any corporation, subsidiary, divisions, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any food, as "food" is defined in section 15 of the Federal Trade Commission Act, in or

affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication, the extent to which the food contains pesticides or any particular pesticide, as "pesticide" is defined in title 7, section 136(u) of the United States Code.

II.

It is Further ordered, That respondent Vons Companies, Inc., a corporation, its successors and assigns, and its officers, and respondent's representatives, agents and employees directly or through any corporation, subsidiary, divisions, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any food, as "food" is defined in section 15 of the Federal Trade Commission Act, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, to forthwith cease and desist from making directly or by implication, any representation concerning the presence or health effects of any pesticide applied to or present in the food, as "pesticide" is defined in title 7, section 136(u) of the United States Code, unless at the time making the representation respondent possesses and relies upon competent and reliable scientific evidence substantiating such representation. To the extent that such evidence consists of tests, experiments, analyses, research, studies or other evidence based on the expertise of professionals, such evidence shall be "competent and reliable" only if those tests, experiments, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, using only procedures that are generally accepted in the profession as yielding accurate and reliable results.

III.

It is Further ordered, That respondent, in connection with the advertising, promotion, offering for sale, sale or distribution of any product covered by this Order, shall for three years from the date of last dissemination of any representation covered by this Order, maintain and upon written request make available to the Federal Trade Commission for inspection and copying:

1. All materials relied upon in making any representation covered by this Order;

2. All tests reports, studies, surveys or demonstrations in its possession that materially contradict, qualify, or call into question the basis upon which

respondent relied at the time of the initial dissemination and each continuing or successive dissemination of any representation covered by this Order.

IV.

It is Further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution or subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order.

V.

It is Further Ordered, That respondent shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from The Vons Companies, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns advertising regarding the pesticide content of produce sold by Vons grocery stores. The Vons Companies, Inc. ("Vons") is a Michigan corporation that operates Vons grocery stores in California and Nevada.

The Commission's complaint in this matter charges Vons with falsely claiming, in a point-of-sale brochure, that it has pesticide free produce. In fact, the complaint alleges, the produce sold in Vons grocery stores is not free of pesticides. Vons' dissemination of the false claim in the brochure is alleged to be a deceptive act or practice in violation of section 5(a) of the Federal Trade Commission Act and a false

advertisement for food in violation of section 12 of the Federal Trade Commission Act.

The consent order contains provisions designed to remedy the advertising violation charged by preventing Vons from engaging in similar acts and practices in the future. Part I of the order prohibits Vons, its successors and assigns, and its officers, and Vons, representatives, agents and employees from misrepresenting, directly or by implication, the extent to which any food contains pesticides, or any particular pesticide, as "pesticide" is defined in title 7, section 136(u) of the United States Code. Part II of the order prohibits Vons and others from making, directly or by implication, any representation concerning the presence or health effects of any pesticide applied to or present in any food unless at the time of making the representation respondent possesses and relies upon competent and reliable scientific evidence substantiating such representation. For purposes of part II, to the extent that any evidence proffered by Vons in support of any representation concerning the presence or health effects of any pesticide applied to or present in any food consists of tests, experiments, analyses, research, studies or other evidence based on the expertise of professionals, such evidence shall be "competent and reliable" only if those tests, experiments, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, using only procedures that are generally accepted in the profession as yielding accurate and reliable results.

Parts III, IV, and V of the order are standard order provisions requiring Vons to retain records demonstrating its compliance with the order; to notify the Commission of any changes in the structure of the corporation that may affect its compliance; and to report to the Commission its compliance with the terms of the order.

The purpose of this analysis is to facilitate public comment of the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,
Acting Secretary.

[FR Doc. 90-13961 Filed 6-14-90; 8:45 am]

BILLING CODE 9750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Drug Abuse Treatment Waiting List Reduction Grant Program

OFFICE: Office for Treatment Improvement, HHS.

ACTION: Request for applications for drug abuse treatment waiting list reduction grant program.

Applications are invited for waiting list reduction grants on the contingency that this program may be reauthorized and funds may be available for awards in FY 1990.

I. Introduction

Community drug abuse treatment program directors and State drug abuse authorities have consistently reported in recent months and years that they are turning away many individuals who seek treatment because of lack of capacity to enroll and serve them. This is particularly true in major metropolitan areas, low-income communities and neighborhoods, and other areas with a high incidence of heroin or cocaine/crack use. Although no hard data exist on the true number of persons who would be in treatment if it were available, treatment experts believe that the number is in the thousands. Given the rapidly growing AIDS epidemic in the nation and the fact that approximately one-third of all new AIDS cases are contracted through use of contaminated intravenous drug needles, it is critical that the nation's ability to provide treatment to drug abusers be expanded.

II. Legal Authority/Contingency of Funding

Section 509E of the Public Health Service Act, as needed by Public Law 100-690, the Anti-Drug Abuse Act of 1988, authorizes the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) to make grants to public and nonprofit private entities to reduce drug abuse treatment waiting lists by expanding the capacity of existing programs.

In FY 1989 the Congress authorized a \$100 million ceiling for waiting list reduction grants and appropriated \$75 million in 1989 and an additional \$25 million in 1990 to implement the program. In a supplemental appropriation enacted for FY 1990, the Congress appropriated an additional \$40 million for waiting list reduction grants subject to an increase in the previously

enacted authorization level of \$100 million. While the Congress has yet to increase the authorization ceiling, they have set a deadline for doing so by September 10, 1990. If the deadline is not met, the \$40 million becomes available for other agency purposes.

The purpose of reannouncing this program is to solicit applications from eligible entities *in case* the Congress enacts an increase in the authorization level by the September 10 deadline. While we want to be in a position to award grants under this program if the Congress increases the authorization ceiling, you should be aware that if they fail to do so, applications submitted in response to this announcement will not be funded.

II. Purpose and Approach

This RFA requests applications for Drug Abuse Treatment Waiting List Reduction Grants to help existing drug abuse treatment programs rapidly expand their capacity to serve drug abusers who want treatment but are not currently receiving it, i.e., they are on a waiting list. Grant awards may be used to cover all allowable startup and treatment delivery costs related to expanding a program's treatment capacity. The amount of a grant award, however, will be determined by multiplying the number of proposed new treatment slots by the current cost for each type of slot in an applicant's program, i.e., outpatient, residential, or other (see definition of slot on page 11 under requirement 3).

Drug abuse treatment programs interested in applying for the waiting list reduction grants should consider not only whether they meet the minimum statutory eligibility requirements described below, but also how they potentially will score under the review criteria described in Section VIII. All applications will initially be screened against the minimum requirements; those that meet these requirements will be evaluated further and ranked for funding consideration on the basis of additional evidence and information they provide as described in the review criteria. Highest overall funding priority will be given to those applicants who have the greatest need to expand their programs (i.e., they have the largest waiting lists and the longest average wait to enter treatment); propose to create the most new treatment slots; are part of an overall State plan to expand drug abuse treatment capacity; provide State verification of their existing waiting lists; and provide the strongest assurances that funding for their

expanded treatment slots will continue to be available after the grant expires.

Grants will be awarded on a competitive basis for one year and are not renewable. Programs that received an award under the FY 1989 announcement will not be eligible to receive a second award under this announcement. However, this situation could change if Congress enacts new authorization for this program. Therefore, programs currently funded under existing authorization may or may not be eligible for funding and should be aware of this possibility. Also, please note new authorization may impose unforeseen conditions that are not in the RFA and that apply to these grants. Grants are not available under this announcement for programs treating alcoholism or alcohol abuse. However, drug abuse programs that address alcohol problems as part of drug abuse treatment are eligible. Inpatient hospital drug abuse programs are not eligible for funding.

IV. Minimum Statutory Eligibility Requirements

Any public or nonprofit private organization is eligible to apply for a Drug Abuse Treatment Waiting List Reduction Grant. Such an organization must meet the following four statutory requirements:

(1) Be Experienced in Delivering Drug Abuse Treatment

To be eligible for consideration for funding, applicants must show that their programs have been in operation for at least one year at the time of application.

(2) On the Date the Application Is Submitted, Be Successfully Carrying Out a Program for the Delivery of Such Services as Approved by the State or Territory¹

To be eligible for consideration for funding, applicants must show evidence that they are licensed by an appropriate State authority to provide drug abuse services, or that they possess a "Certificate of Need" to establish a drug abuse treatment program/facility where that is required. In States that do not require either a license or a Certificate of Need, the applicant must secure and submit a letter from the State indicating that the applicant is "successfully carrying out a program for delivery of drug abuse services."

(3) Be Unable, as a Result of the Number of Requests for Admission, to Admit Individuals Any Earlier Than a Month After the Individual's Request for Admission

In order to be considered eligible for funding, an applicant must show evidence that a waiting list has been maintained for a minimum of 30 days prior to the date of application, and that treatment cannot be provided to individuals on the list for at least 30 days after they applied for admission. The waiting list must be verified by an independent source (e.g., the State or a private auditor), who also must certify that the waiting list meets the following criteria:

- Only individuals who have been screened to determine eligibility for admissions are on the waiting list;
- There is a roster, log, file, or equivalent record with names, addresses, and telephone numbers of qualified applicants for admission, date of application, and dates and nature of follow-up contacts;
- There is a policy defining what individuals on waiting lists must do to remain eligible for admission and/or how the provider will go about ensuring that applicants for admission remain interested in entering treatment; and
- There are criteria defining when an individual's name is to be removed from the waiting list because of a loss of eligibility for admission or a failure to keep in contact with the provider. Potential applicants who do not now have such a systematic procedure for documenting requests for admission and for administering a waiting list should develop these immediately.

(4) Provide Assurances That the Program Will Have Access to Financial Resources Sufficient to Continue the Program After the One-year Terminates

To be eligible for consideration for funding, an applicant must file (at a minimum) an assurance from the chief executive officer(s) of the program's primary funding source(s) that the applicant is eligible for, and will receive, preferential consideration for available financial resources needed to continue the expanded treatment capacity once the grant period ends. For public programs, a letter from the head of the State drug abuse authority will meet this requirement. For private non-profit programs, a copy of a letter from the chief executive officer(s) of the primary funding source(s), such as a corporation or foundation, to the treatment organization's Board of Directors will meet the requirement.

If a program relies on small contributions generated by fundraising campaigns as the major source of its funding, the program may submit a detailed plan of fundraising activities in lieu of assurances from funding sources to meet this minimum eligibility criterion. A brief history of previous fundraising efforts also should be included in the plan.

V. "Umbrella" Applications

A State or a federally recognized Indian tribal governmental body may submit an "umbrella" application to coordinate distribution of funds to local provider organizations. Umbrella applications must contain all required information for each program for which funds are being sought. The State or Indian tribal government must submit assurances (in a cover letter) that:

- The data pertaining to all local treatment programs included in the umbrella application are accurate;
- The waiting lists of all the local programs are valid and that the waiting list system of each meets the criteria on page 3;
- The current cost data provided by the local programs on residential, outpatient, or other treatment slots are valid and realistic; and
- The expansion plans of the local programs are sound and the programs have appropriate managerial capacity to handle the added capacity.

Each individual treatment program in an umbrella application will be ranked separately in the review process. Programs will be funded principally in rank order, irrespective of whether they are included in an umbrella application or have applied independently. Only one award will be made to each umbrella applicant, which may include funds for all or only some of the treatment programs covered by the application. Umbrella applicants may not use a grant award to support any projects other than those named on the Notice of Grant Award. Umbrella applicants will be legally and financially responsible for all aspects of the grant.

If a local treatment program is seeking support under an umbrella application, it may not also apply independently.

VI. Application Characteristics

Applicants should use form PHS 5161-1 (Rev. 3/89). The title of this RFA, "Drug Abuse Treatment Waiting List Reduction Grant," should be typed in item 9 on the face page of the Application for Federal Assistance (Standard Form 424) in PHS 5161-1.

Instructions are provided in the application kit for filling out parts I, II,

¹ Hereafter, "State is meant to include Territory.

and III of the application form. For Part IV, "Program Narrative," the information itemized in 1-8 below must be included.

An umbrella applicant must submit a cover letter designating it as an umbrella application and listing all programs covered by the application. Umbrella applicants should file only one form PHS 5161-1 (Rev. 3/89), with consolidated budget information for all programs in the umbrella application. However, umbrella applicants also must submit separate budget sheets and a separate Program Narrative for each program.

All information provided in applications must be accurate and truthful to the best of the applicant's knowledge, under penalty of all applicable federal laws and regulations.

Program Description (maximum of 5 pages)

1. A description of the treatment program
 - a. Name, address, and telephone number of program
 - b. When it was established
 - c. Ownership and governance
 - d. Drug abuse incidence and prevalence data for area served
 - e. Admission and discharge patterns

f. Demographic characteristics of client population (e.g., sex, age, and ethnicity)

g. Name and telephone number of program contact person

2. A description of how the program will establish and operate new treatment slots, including rental or leasing of additional space, staffing plans, development of new program components, etc.

Data

3. Current number of treatment slots.
A slot is a unit of measure of treatment capacity, the maximum number of persons that can be treated or carried on program's rolls at one time, given the program's physical characteristics, size and composition of staff, and financial and other resources. For example, if an outpatient program has set a policy that there must be one counselor for every 20 patients and it has five full-time counselors, then the program has a capacity of 100 slots. In other words, the program should not keep more than 100 persons on its active patient rolls, given its current resources. Because patients are regularly being discharged and new patients admitted, a single slot, in the course of a year can be filled more than one person. A 20 bed

facility designed to provide inpatient detoxification in a standard course of treatment of one month can serve at least 240 persons a year (20 beds x 12 months), but it still only has 20 slots. Slots and persons served are not synonymous. Treatment costs may also be calculated using the concept of slots. The "annual average cost per treatment slots" is equal to a program's total cost of providing treatment over one year divided by the average treatment capacity, expressed as slots, for that year.

- a. outpatient _____
- b. residential _____
- c. other (specify) _____
4. Current annual cost per slot for each modality in program.
 - a. outpatient _____
 - b. residential _____
 - c. other (specify) _____
 Describe how costs were determined.
5. Proposed number of treatment slots to be created with grant funds.
 - a. outpatient _____
 - b. residential _____
 - c. other (specify) _____
6. Quarterly schedule for bringing new treatment slots into operation. (All new slots must be operational by the end of the one-year grant period.)

NEW SLOT IN OPERATION

Quarter	Outpatient	Residential	Other (specify)
1.....			
2.....			
3.....			
4.....			
Totals.....			

7. Estimates of number of slots (outpatient, residential, other) to be used for treatment of users of heroin, cocaine/crack, marijuana, amphetamines, and drug/alcohol combination, and other (specify).

NUMBER OF SLOTS

Drug of abuse	Outpatient	Residential	Other (Specify)
Heroin.....			
Cocaine/Crack.....			
Marijuana.....			
Amphetamines.....			
Drug/Alcohol Combination.....			
Other (specify).....			

8. Waiting list information: Size and length of wait.

a. total number of persons on waiting list for one month or more at time of application _____

b. average number of days these persons have been on waiting list _____

Documentation to Establish Minimum Eligibility

9. Attach documentation specified below to demonstrate minimum eligibility by complying with four statutory criteria (see Section IV for statutory eligibility requirements); and

additional documents needed for rating purposes (see Section VIII). Mark documents "Eligibility", "Rating," or both, as appropriate.

Requirement 1—Verification of at least one year's experience in delivering drug abuse treatment: Copies of

individual program's charter, past licenses, etc.

Requirement 2—Verification that the applicant is successfully carrying out a drug abuse treatment program that is approved by the State: Copies of appropriate current licensure, certification, or accreditation. If the program is operating in a State which does not require any of these, attach a letter from the State drug abuse authority saying that the applicant is "successfully providing a program of drug abuse treatment."

Requirement 3—Demonstration that the applicant is unable, as a result of the number of requests for admission, to admit individuals any earlier than one month after a request for admission: Copies of waiting lists, independent verification of waiting list accuracy, and certification that waiting list procedures described in Section IV-3 are in place. (In order to assure confidentiality to persons on waiting lists, obscure all last names, last four digits of telephone numbers, and street numbers. Also obscure any other notations that could identify a specific individual. First names, telephone exchanges, street names, demographic and eligibility information, follow-up information, dates, and other notations should be left intact.)

Requirement 4—Assurances that the program will have access to financial resources sufficient to continue the program after the grant terminates: Letters from primary funding source(s) providing assurance of access to continued support for expanded treatment capacity beyond the grant period, or, if appropriate, a fund-raising plan as described in Section IV-4.

An inventory of the above documents (see checklist in application kit) should be completed by every program, whether part of an umbrella application or applying independently, to help assure that all relevant documents have been provided.

VII. Application Process

Application kits containing all necessary forms and instructions to apply for a Drug Abuse Treatment Waiting List Reduction Grant may be obtained from: Waiting List Program, Technical Resources, Inc., P.O. Box 409, Rockville, Maryland 20848-0409, 301-230-4764

The signed original and two permanent, legible copies of the completed application, and all supporting materials, should be sent to:

Waiting List Program, Technical Resources, Inc., P.O. Box 409, Rockville, Maryland 20848-0409.

Express Mail Address:

Waiting List Program, Technical Resources, Inc., Suite 200, 3202 Tower Oaks Boulevard, Rockville, Maryland 20852.

Important: The exterior of the envelope, package, or express delivery pouch should be clearly marked: "WAITING LIST."

Additional copies of applications will need to be made in order to have enough copies for review. Accordingly, one copy of the application must be provided unbound with no staples, paper clips, fasteners, or heavy or lightweight paper stock within the document itself. Refrain from attaching or including anything that cannot be photocopied using automatic processes. Use only 8½" x 11" white paper, with printing only on one side. Pages must be numbered consecutively from beginning to end, including any attachments.

Applications must be complete and contain all information needed for review, and be self-explanatory to reviewers who are unfamiliar with the current treatment program of the applicant. No addenda will be accepted later than the Receipt Date unless specifically requested by ADAMHA.

Applications submitted in response to this announcement are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through the Department of Health and Human Services regulations at 45 CFR Part 100. Through this process, States, in consultation with local governments, are provided the opportunity to review and comment on applications for Federal financial assistance. Applicants should contact the State's Single Point of Contact (SPOC) as early as possible to determine the applicable procedure. A current listing of SPOCs will be included in the application kit. SPOC comments are due one month after application Receipt Date. Send to: Waiting List Program, Technical Resources, Inc., P.O. Box 409, Rockville, Maryland 20848-0409.

Application Receipt and Review Schedule

Receipt Date: August 15, 1990.

Estimated Funding Date: September 1990.

Applications received after the above Receipt Date will not be reviewed or eligible for funding.

VIII. Review Process

Applications submitted in response to this RFA will be reviewed by the Office for Treatment Improvement (OTI) to determine if they meet the minimum

statutory eligibility requirements (see Section IV).

Applications that are ineligible, incomplete for review, or nonresponsive to this RFA will be screened out by OTI upon receipt without further consideration and the applicants notified.

Eligible applications will be reviewed for rating on the basis of the Review Criteria specified below by a panel of persons from inside and outside the Federal government who are knowledgeable about drug abuse treatment programs.

Review Criteria

Applications will be rated as follows. A total of 100 points is available.

Requirement 1: Experience in delivering drug abuse treatment. Applications will be evaluated on this requirement only to determine if they meet minimum eligibility, not for rating.

Requirement 2: The applicant, on the date the application is submitted, is successfully carrying out a program for the delivery of such services approved by the State. (Total possible points-20)

If an independent treatment program files an application directly (not under an umbrella), ten (10) points will be given if a letter is included from the State drug abuse authority endorsing the applicant's services.

Twenty (20) points will be given to applicants that provide evidence that their request for funds to reduce waiting lists is part of an overall State effort to expand drug abuse treatment capacity. Submission of the applicant's request under a State umbrella application will qualify the applicant for these points. For programs applying independently, including a copy of appropriate State capacity expansion plans that name the applicant agency will qualify the applicant for these points.

Requirement 3: As a result of the number of requests for admission to the program, the applicant is unable to admit any individual into the program any earlier than one month after the date on which the individual makes a request for such admission. (Total possible points-60)

On this requirement, points will be assigned on three different measures:

Size of Waiting List

Up to 15 points will be given on the basis of the total number of individuals who have been on a program's waiting list for a month or more.

Length of Wait for Admission

Up to 15 points will be given based on the average number of days persons

seeking treatment have been on the program's waiting list.

In order to earn points on either of the two above measures, applicants must be certain to submit documents that clearly demonstrate both the size of the list of drug abusers who have been waiting for treatment more than 30 days, and the average length of the wait (i.e., the waiting list itself, with personal identifiers removed, and a calculation of the average length of wait in days).

Number of Treatment Slots To Be Established

Up to 30 points will be assigned based on the number of *new* treatment slots to be established with grant funds, i.e., the more *new* slots, the more points awarded.

Requirement 4: An applicant must provide satisfactory assurances that, after Federal funding is no longer available, the applicant will have access to financial resources sufficient to continue the program. (Total possible points-20)

Ten (10) points will be given to applicants that include, as part of the application, documents from the chief official(s) of funding source(s) (e.g., State drug abuse director, foundation board chairman, corporate chief financial officer) indicating that funding for continuation of expanded treatment capacity beyond the grant period is a *top priority* of the appropriate funding source, and that any funding requests made to State legislatures, corporate or foundation boards, will make continuation of new treatment capacity the first allocation.

Twenty (20) points will be given to applicants that include a letter(s) from funding source(s) assuring that funds *will be available* to continue the expanded treatment capacity after Federal funding terminates.

IX. Award Procedure

Upon completion of the review, each program, whether submitted independently or as part of an umbrella application, will be assigned a composite score based on the above review criteria. Composite scores will be used to place applications in rank order for consideration for grant awards. All or only some of the programs included in an umbrella application may receive support.

State umbrella applicants will receive a Notice of Grant Award specifying which projects are being funded. The State will be responsible for notifying the individual programs. ADAMHA will send a Notice of Grant Award to independent applicants who have been approved for funding, and a letter to

other independent applicants regarding the final action on their application.

Funding decisions will be based primarily on the ranking of independent applications and of programs within umbrella applications, according to the review process described above. However, overall program and geographic balance, and public health needs, such as drug treatment services to pregnant and post-partum women, may also be considered in selecting applications and programs for support.

Period of Support

Support may be requested for a period of up to 12 months. Current legislation does not permit additional years of support.

Terms and Conditions of Support

Allowable Costs

Grant funds may be used to cover all allowable costs clearly related and necessary to creating the new treatment capacity to eliminate a portion of or all of the waiting list as constituted on the date of the application.

The budget should be based on the number of *new* treatment slots scheduled to be created by the program, multiplied by the current annual cost of each specific type of slot created (outpatient, residential, or other). After multiplying current slot costs by the number of slots to be created, the figures on the budget sheets contained in form PHS 5161-1 should be broken down and an explanation for each line item included. The explanation should include line items for each position proposed, line items for equipment, supplies, etc. The line item for fringe benefits should indicate which benefits are included. If indirect costs are proposed, a copy of an indirect cost agreement either with the Federal, State or local government should be included with the submission. If no agreement exists, a complete explanation of the indirect costs proposed should be submitted.

A State or Indian tribal government awarded an umbrella grant may use up to two percent of the awarded grant funds to cover the administrative costs of managing the grant. No additional funds will be given for this purpose.

All new slots must be operational by the end of the grant period. No grant funds may be expanded after the 12-month grant period ends.

Grant funds must be used to supplement, not supplant, existing treatment service delivery activities.

Grant funds may not be used to defray the direct treatment costs for any individual who has been in treatment

within 30 days in another program operated by the same applicant, except where the individual had previously been enrolled in the expanded program and is being readmitted. The provision of limited services to a waiting individual as a means of keeping him or her engaged, however, does not constitute treatment and does not affect eligibility for reimbursement of that individual's treatment under the grant.

Umbrella awards may be used only to fund those programs approved in the Notice of Grant Award to the applicant. Funds may not be shifted among approved programs.

Nonallowable Costs

Applicants must provide a written assurance that grant funds will not be used to:

- Provide inpatient hospital services.
- Make cash payments to intended recipients of services under the program involved.
- Purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment.
- Satisfy any requirement for the expenditure of non-Federal funds.
- Provide financial assistance to any entity other than a public or nonprofit private entity.

Availability of Funds

If Congress increases the authorization ceiling by the September 10, 1990 deadline, \$40 million will be available to award grants under this announcement (see Legal Authority/Contingency of Funding section on page 1).

X. Grant Administration

Grants must be administered in accordance with the *PHS Grants Policy Statement* (Rev. January 1, 1987).

Federal regulations at Title 45 CFR parts 74 and 92, "Administration of Grants," are applicable to these awards.

Confidentiality of Drug Abuse Patient Records

Grantees must agree to maintain the confidentiality of drug abuse client data in accordance with Federal regulations governing "Confidentiality of Alcohol and Drug Abuse Patient Records" (42 CFR part 2).

Final Reports

Programmatic Performance Reports of the progress made in meeting expansion goals must be submitted to the Office for Treatment Improvement within 90 days after completion or termination of the

grant. The reports should include the following information:

1. Activities undertaken to expand treatment availability.
2. Number of new slots established, by type of slot.
3. Number of persons served, by type of drug problem and treatment modality.
4. Total number of persons currently on waiting list.
5. Average length of wait for each person currently on waiting list.
6. Problems and solutions.
7. Progress made in ensuring future funding for the grant-initiated program.

Grantees are also required to submit a Financial Status Report, which presents actual outlays and obligations of funds in a manner consistent with the official accounting practices of the State or independent treatment program.¹

An original and two copies of the final reports must be submitted to the ADAMHA Grants Management Officer within 90 days of the expiration or termination of the grant.

Site Visits

Although no site visits to applicant programs or grantees are planned, the Federal Government reserves the right to make such site visits or inspections.

XI. Further Information

Contact for Application Information

Waiting List Reduction Program,
Technical Resources, Inc., P.O. Box
409, Rockville, MD 20848-0409,
Telephone: Dave Porter, 230-4797,
Grace Greenlee, 230-4771

Contact for Programmatic Information

Address: Office for Treatment
Improvement, Alcohol, Drug Abuse,
and Mental Health Administration,
5600 Fishers Lane, Rockwall 2,
Rockville, MD 20857
Telephone: Hedy Hubbard, Director,
Waiting List Reduction Program, OTI:
(301) 443-6549, Rebecca Ashery,
Chief, Special Initiatives Branch, OTI:
443-6533

Contacts for Grants Management Information

Address: Grants Management Branch,
National Institute of Mental Health,
5600 Fishers Lane, Room 7C-05,
Rockville, MD 20857
Telephone: Bruce Ringler, Chief, Grants
Management Branch, NIMH: (301)
443-3065, Diana Trunnell, Assistant
Chief, Grants Management Branch,
NIMH: (301) 443-3065

The Catalog of Federal Domestic
Assistance Number for this program is 13.175.

Joseph R. Leone,

Associate Administrator for Management,
Alcohol, Drug Abuse, and Mental Health
Administration.

[FR Doc. 90-13969 Filed 6-14-90; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

United Suppliers, Inc.; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration,
HHS.

ACTION: Notice.

SUMMARY: The Food and Drug
Administration (FDA) is withdrawing
approval of a new animal drug
application (NADA) held by United
Suppliers, Inc. The NADA provides for
the use of certain tylosin Type A
medicated articles to make Type C
medicated swine feed. The firm
requested withdrawal of approval. In a
final rule published elsewhere in this
issue of the *Federal Register*, FDA is
amending the animal drug regulations
by removing those portions reflecting
the approval.

EFFECTIVE DATE: June 25, 1990.

FOR FURTHER INFORMATION CONTACT:

Mohammad I. Sharar, Center for
Veterinary Medicine (HFV-216), Food
and Drug Administration, 5600 Fishers
Lane, Rockville, MD 20857, 301-443-
4093.

SUPPLEMENTARY INFORMATION: United
Suppliers, Inc., P.O. Box 538, Eldora, IA
50627, is the sponsor of NADA 102-590,
originally approved December 12, 1978,
for manufacture of certain tylosin Type
A medicated articles to make Type C
medicated swine feed. The sponsor
requested the withdrawal of approval of
the NADA by letter of August 10, 1989,
because the firm no longer manufactures
the product.

Therefore, under authority delegated
to the Commissioner of Food and Drugs
(21 CFR 5.10) and redelegated to the
Center for Veterinary Medicine (21 CFR
5.84), and in accordance with § 514.115
Withdrawal of approval of applications
(21 CFR 514.115), notice is given that
approval of NADA 102-590 and all
supplements thereto is hereby
withdrawn, effective June 25, 1990.

In a final rule published elsewhere in
this issue of the *Federal Register*, FDA is
amending 21 CFR 510.600(c)(1) and (c)(2)
and 558.625(b)(46) to reflect the
withdrawal of approval.

Dated: June 11, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine,

[FR Doc. 90-13904 Filed 6-14-90; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Final Definitions, Project Requirements, Review Criteria, Funding Preference and Funding Priorities for Grants for Interdisciplinary Training for Health Care for Rural Areas

The Health Resources and Services
Administration (HRSA) announces the
final definitions, project requirements,
review criteria, funding preference and
funding priorities for Grants for
Interdisciplinary Training for Health
Care for Rural Areas, section 799A of
the Public Health Service Act (the Act),
as amended.

Section 799A of the Act, added by
Public Law 100-607, authorizes the
Secretary to award grants for
interdisciplinary training projects
designed to provide or improve access
to health care in rural areas.
Specifically, projects funded under this
authority shall be designed to:

(a) Use new and innovative methods
to train health care practitioners to
provide services in rural areas;

(b) Demonstrate and evaluate
innovative interdisciplinary methods
and models designed to provide access
to cost-effective comprehensive health
care;

(c) Deliver health care services to
individuals residing in rural areas;

(d) Enhance the amount of relevant
research conducted concerning health
care issues in rural areas; and

(e) Increase the recruitment and
retention of health care practitioners in
rural areas and make rural practice a
more attractive career choice for health
care practitioners.

A recipient of funds may use various
methods in carrying out the projects
described above. The legislation cites
the following methods as examples:

(a) The distribution of stipends to
students of eligible applicants;

(b) The establishment of a
postdoctoral fellowship program;

(c) The training of faculty in the
economic and logistical problems
confronting rural health care delivery
systems; or

(d) The purchase or rental of
transportation and telecommunication
equipment where the need for such
equipment due to unique characteristics

of the rural area is demonstrated by the recipient.

Eligibility

To be eligible for a Grant for Interdisciplinary Training for Health Care for Rural Areas, each applicant must be located in a State and be:

1. A local health department, or
2. A nonprofit organization, or
3. A public or nonprofit college, university or school of, or program that specializes in nursing, psychology, social work, optometry, public health, dentistry, osteopathic medicine, physician assistants, pharmacy, podiatric medicine, allopathic medicine, chiropractic, or allied health professions.

For-profit entities are not eligible to obtain funds under section 799A either directly or through subgrants or subcontracts.

Each application must be jointly submitted by at least two eligible applicants. One of the applicants must be an academic institution. Each application must demonstrate the need and demand for health care services, knowledge or available resources and the most significant service and educational gaps within its targeted geographic area.

Statutory Project Requirements

Interdisciplinary training projects funded under section 799A must:

1. Assist individuals in academic institutions in establishing long-term collaborative relationships with health care facilities and providers in rural areas; and
2. Designate a rural health care agency or agencies for clinical treatment or training, including hospitals, community health centers, migrant health centers, rural health clinics, community mental health centers, long-term care facilities, facilities operated by the Indian Health Service or an Indian tribe or tribal organization or Indian organization under a contract with the Indian Health Service under the Indian Self-Determination and Education Assistance Acts, or Native Hawaiian health centers.

Not more than 10 percent of the individuals receiving training with section 799A funds shall be trained as doctors of medicine or osteopathic medicine. A grantee may not use more than 10 percent of the grant funds for administrative costs.

Proposed definitions, project requirements, review criteria, funding preference and funding priorities were published in the *Federal Register* on March 30, 1990 (55 FR 12024) for public

comment. Two comments were received during the 30-day comment period.

One respondent expressed appreciation for the recent publication of the notice in the *Federal Register* and was pleased to be informed of this initiative.

Another respondent expressed concern with the number of special considerations or requirements and recommends that neither the number of disciplines nor the "frontier area" requirement be the overriding criteria in the project selection process and that determination be based on innovative and creative approaches to meeting the specific health care needs of medically underserved rural areas.

It is noted that in FY 1990 the Department is not applying any special considerations in the review of applications. Moreover, an institution may apply for a grant under section 799A without requesting either a funding preference or funding priority. The Department emphasizes that a priority or preference in funding does not preclude an applicant from competing favorably for a grant in a non-priority or non-preference area. These funding factors, which address high priority needs, are applied to approved applications to place them in a more competitive funding position. They do not affect technical eligibility for an award.

Therefore, as proposed, the definitions, project requirements, review criteria, funding preference and funding priorities will be retained as follows:

Final Definitions

The following definitions will be used for the purpose of Grants for Interdisciplinary Training for Health Care for Rural Areas.

"Accredited Health Professions Institutions" means schools of medicine, dentistry, osteopathic medicine, pharmacy, optometry, podiatric medicine, veterinary medicine, public health, and chiropractic, as defined in section 701(4) of the Act, schools of allied health as defined in section 701(10) of the Act, and schools of nursing as defined in section 853 of the Act, which are located in States as defined in section 701(11) of the Act and which are accredited as provided in section 701(5) of the Act. The term also includes a "graduate program in health administration" and a "graduate program in clinical psychology" as defined in section 701(4) of the Act.

"Clinical Treatment or Training" means direct, supervised participation in patient care by observation, examination and performance of procedures as are appropriate for the

assigned role of the trainee on the rural health care team.

"Community Health Center" means an entity as defined in section 330(a) of the Act and in regulations at 42 CFR 51c.102(c).

"Community Mental Health Center" means for purpose of this grant program a facility which provides essential elements of comprehensive mental health services:

- (1) Inpatient services;
- (2) Outpatient services;
- (3) Partial hospitalization services—must include at least day care service;
- (4) Emergency services provided 24 hours per day must be available within at least one of the first three services listed above; and
- (5) Consultation and education services available to community agencies and professions personnel.

"Continuing Medical Education" or "Continuing Education" means any education for the purpose of maintaining or enhancing the knowledge, attitudes, or abilities of a physician or health professional in his or her field which does not lead to any formal advanced standing in the given profession.

"Geographic Area" means a contiguous geopolitical unit, which may include counties, minor civil divisions, census county divisions, groups of census tracts, or a combination of such units.

"Indian Tribe" or "Tribal Organization" means an organization or entity as defined in section 4(e) and 4(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

"Interdisciplinary Training" means a planned and coordinated program of education or training aimed at preparation of functioning teams of two or more health care practitioners from different health disciplines who will coordinate their activities to provide services to a client or group of clients.

"Long-Term Care Facility" is a facility which offers services designed to provide diagnostic, preventive, therapeutic, rehabilitative, supportive and maintenance services for individuals who have chronic physical or mental impairments. This facility may have a variety of institutional and non-institutional health settings, including the home, and the goal of the service provided is to promote the optimum level of physical, social and psychological functioning.

"Migrant Health Center" means an entity as defined in section 329(a) of the Act and in regulations at 42 CFR 56.102(g)(1).

"Native Hawaiian Health Center" means an entity as defined in the Native Hawaiian Health Care Act of 1988 (Pub. L. 100-579) (42 U.S.C. 11707(4)).

"Nonprofit" as applied to any entity means one, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

"Postdoctoral Fellowship Program" means a program of advanced academic or professional work, after the attainment of a doctoral degree, that is sponsored by a school of/or program that specializes in medicine, osteopathic medicine, nursing, dentistry, psychology, social work, optometry, public health, pharmacy, podiatric medicine, or allied health.

"Rural Area," means a Non-Metropolitan Statistical Area or an area located outside a Metropolitan Statistical Area as defined by standards followed by the Office of Management and Budget. "Rural Area," as defined in section 799A, includes a "frontier area" in which the population density is less than 7 individuals per square mile.

"Rural Health Care Agency" means a hospital, community health center, migrant health center, rural health clinic, community mental health center, long-term care facility, facility operated by the Indian Health Service or an Indian tribe or tribal organization under a contract with the Indian Health Service under the Indian Self-Determination and Education Assistance Acts, or Native Hawaiian health centers.

"Rural Health Clinic" means an entity as defined under section 1861(aa)(2) of the Social Security Act and in regulations at 42 CFR 491.2.

"State" means, in addition to the 50 States, only the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

Final Project Requirements

A project supported under this grant program must meet the following requirements:

(1) Carry out the following two project purposes at a minimum, among those authorized by section 799A: (a) Interdisciplinary training to prepare health care practitioners to provide services in rural areas; and (b) increase the recruitment and retention of health care practitioners in rural areas.

(2) Collaborate with the resources of an Area Health Education Center (AHEC) or Geriatric Education Center

(GEC) if these centers are present in a State or part of a State where the rural interdisciplinary training project is conducted.

(3) Evaluate in a systematic manner, as prescribed by the Secretary, its project activity, including determination of a baseline at the outset of the project and measurement of progress by trainees and faculty.

(4) Provide and clearly define for each level of training (undergraduate, graduate, postgraduate, continuing education and faculty training) the disciplines and numbers of students to receive training as well as the duration of the training. This is to include an outline of basic criteria for the selection of students to participate in the training. These project elements are to be tracked and linked to project outcomes.

(5) Provide specific indicators of the extent and means by which it plans to become self-sufficient.

Final Review Criteria

The HRSA will review applications taking into consideration the following factors:

(1) The potential effectiveness of the proposed project in carrying out the training purposes of section 799A of the Act;

(2) The extent to which the project explains and documents the need for the project in the rural area to be served;

(3) The degree to which the proposed project adequately provides for the interdisciplinary training of health professionals to practice in the rural area to be addressed by the project;

(4) The degree to which the applicant offers appropriate clinical training experiences in rural health care settings;

(5) The degree to which the applicant demonstrates a commitment to establishing and maintaining long-term collaborative relationships between academic institutions and health care facilities and providers in rural areas;

(6) The effectiveness of the organizational arrangements necessary to carry out the project;

(7) The administrative and management capability of the applicant to carry out the proposed project in a cost-effective manner;

(8) The capability of the proposed staff and faculty to provide the proposed instruction;

(9) The extent to which the trainee recruitment and selection process assures that qualified trainees with significant interest or background in rural health care are involved in the project;

(10) The extent to which the budget justification is reasonable and indicates that institutional and community

support to the project are provided to the maximum extent possible; and

(11) The extent to which the financial information provided indicates an effective utilization of grant funds and indicates that the project will continue on a self-sustaining basis.

Final Funding Preference for Fiscal Year 1990

In making awards in Fiscal Year 1990, a preference will be given to interdisciplinary training involving three or more disciplines. This funding preference would be given to applicants that propose and demonstrate efforts to plan and conduct rural training for health care practitioners, faculty or students representing three or more disciplines.

Final Funding Priorities for Fiscal Year 1990

1. *Training in a "frontier area" or in a designated health manpower shortage area as part of the rural region to be served by the project*—A funding priority will be given to applicants that plan to conduct a substantial part of the proposed interdisciplinary training in "frontier areas," those areas with a population density of less than 7 individuals per square mile.

2. *Curriculum elements that address the uniquenesses of health conditions and ethnic or cultural characteristics of the populations in the rural areas to be served*—A funding priority will be given to applicants that propose to develop, expand or implement curricula that present locally relevant environmental or occupational health conditions or that address the ethnic or cultural characteristics of the populations which reside there.

The *Catalog of Federal Domestic Assistance* number for this program is 13.192. This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: June 11, 1990.

Robert G. Harmon,
Administrator.

[FR Doc. 90-13901 Filed 6-14-90; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to

the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, June 8, 1990.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of package)

1. Evaluating Effective Communication Strategies for Health Information to High Risk Youth Out of School—NEW—The Office of Disease Prevention and Health Promotion is conducting research to identify and evaluate effective health communications strategies for high risk, hard-to-reach adolescents. These findings will help intermediaries/health professionals provide health information on alcohol and other drug use, AIDS, pregnancy, smoking, and violence to these youth. Respondents: Individuals or households; Number of Respondents: 480; Number of Responses per Respondent: 1; Average Burden per Response: .875 hours; Estimated Annual Burden: 420 hours.

2. HRSA Competing Training Grant Application—Form 6025-1—Revision—0915-0060—The Health Resources and Services Administration uses this information to determine the eligibility of applicants for awards, to calculate the amount of each award, and to judge the relative merit of applications. This clearance request adds four programs as eligible users of the form. Current annual burden for this application is 207,228 hours; additional burden is shown below. Respondents: Non-profit institutions.

	No. of respondents	No. of hours per response	No. of responses per respondent
Training in Preventive Medicine Section 793	30	56.28	1
Geriatric Training Section 789(b)	70	56.28	1
Nurse Practitioner and Midwife Traineeships Section 822(b)	50	56.28	1
Nurse Anesthetists Traineeships Section 831(b)	75	56.28	1
Estimated Annual Burden			12,658

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, Room 3002, Washington, DC 20503.

Dated: June 8, 1990.

James M. Friedman,
Acting Deputy Assistant Secretary for Health
(Planning and Evaluation).

[FR Doc. 90-13811 Filed 6-14-90; 8:45 am]

BILLING CODE 4160-17-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on May 25, 1990.

(Call Reports Clearance Officer on (301) 965-4149 for copies of package)

1. Application for Wife's or Husband's Insurance Benefits—0960-0008—The information on form SSA-2 is used by the Social Security Administration to determine an applicant's eligibility to wife's or husband's benefits. The respondents are individuals who file this application for such benefits.

Number of Respondents: 700,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 116,667 hours.

2. Supplemental Security Income—quality Review Case Analysis—0960-0133—The information on form SSA-8505 is used by the Social Security Administration to provide an ongoing assessment of the effectiveness of the Supplemental Security Income program (SSI), SSI policies and procedures, and the effect of incorrect payments. The respondents are SSI beneficiaries who have been selected for this analysis.

Number of Respondents: 22,930.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 11,465 hours.

3. Statement of Agricultural Employer—0960-0036—The information collected on the form SSA-1002 is used by the Social Security Administration to resolve situations in which agricultural workers claim to have been paid wages but the wages have not been reported or have been reported incorrectly. The respondents are agricultural employers.

Number of Respondents: 125,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 20,833 hours.

OMB Desk Officer: Allison Herron

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: June 5, 1990.

Ron Compston,

Social Security Administration, Reports
Clearance Officer.

[FR Doc. 90-13351 Filed 6-14-90; 8:45 am]

BILLING CODE 4190-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-90-1917; FR-2606-N-76]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: June 15, 1990.

ADDRESSES: For further information, contact James Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the *Federal Register* identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency about any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable

law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's *Federal Register* Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: HQ-DA, Attn: DAEN-ZCI-P-Robert Conte; Room 1E671 Pentagon, Washington, DC 20360-2600; (202) 693-4583; Corps of Engineers: Bob Swieconeck, HQ-US Army Corps of Engineers, Attn: CERE-MN, 20 Massachusetts Avenue NW., Washington, DC 20415-1000; (202) 272-1750. (These are not toll-free numbers.)

Dated: June 8, 1990.

Paul Roitman Bardack,
Deputy Assistant Secretary for Program
Policy Development and Evaluation.

Suitable Land (by State)

Alaska

Eklutna Dispersal Site,
Fort Richardson,
Anchorage, AK Co: Anchorage,
Landholding Agency: Army,
Property Number: 219014606
Status: Underutilized
Comment: 500 acres; parkland;
environmentally protected.

Suitable Buildings (by State)

Arkansas

U.S. Army Garrison,
4093 11th Avenue,
Ft. Chaffee, AR Co: Sebastian,
Landholding Agency: Army,
Property Number: 219014607,
Status: Unutilized
Comment: 3045 sq. ft.; 1 story wood frame;
possible asbestos; needs major rehab;
potential utilities.

Maryland

Bldg. 4,
Croom Housing W-35,
Cameron Station, Mount Calvert Road,
Croom, MD Co: Prince George,
Landholding Agency: COE,
Property Number: 319011680,
Status: Excess
Base Closure
Comment: 33816 sq. ft. each; four—2 story
units of family housing; potential sewage
disposal problems; scheduled to be vacated
6/30/90.

Bldg. 12,
Croom Housing W-35,
Cameron Station, Mount Calvert Road,
Croom, MD Co: Prince George,
Landholding Agency: COE,
Property Number: 319011681,
Status: Excess
Base Closure
Comment: 33816 sq. ft. each; three—2 story
units of family housing; potential sewage
disposal problems; scheduled to be vacated
6/30/90.

Bldg. 9,
Croom Housing W-35,
Cameron Station, Mount Calvert Road,
Croom, MD Co: Prince George,
Landholding Agency: COE,
Property Number: 319011682,
Status: Excess
Base Closure
Comment: 33816 sq. ft. each; five—2 story
units of family housing; potential sewage
disposal problems; scheduled to be vacated
6/30/90.

Missouri

Bldg. 21,
Wherry Housing Annex,
6400 Stratford Avenue,
St. Louis, MO Co: St. Louis,
Landholding Agency: COE,
Property Number: 319011632,
Status: Excess
Base Closure
Comment: 160 sq. ft.; 1 story wood and metal
frame; storage shed for housing unit;
scheduled to be vacated 8/15/90.

Bldg. 22,
Wherry Housing Annex,
6400 Stratford Avenue,
St. Louis, MO Co: St. Louis,
Landholding Agency: COE,
Property Number: 319011633,
Status: Excess
Base Closure
Comment: 160 sq. ft.; 1 story wood and metal
frame; storage shed for housing units;
scheduled to be vacated 8/15/90.

Bldg. 23,
Wherry Housing Annex,
6400 Stratford Avenue,
St. Louis, MO Co: St. Louis,
Landholding Agency: COE,
Property Number: 319011634,
Status: Excess
Base Closure
Comment: 160 sq. ft.; 1 story wood and metal
frame; storage shed for housing unit;
scheduled to be vacated 8/15/90.

Bldg. 24,

Comment: 160 sq. ft.; 1 story wood and metal frame; storage shed for housing unit; scheduled to be vacated 8/15/90.

Bldg. 64

Wherry Housing Annex
6400 Stratford Avenue
St. Louis, MO Co: St. Louis
Landholding Agency: COE
Property Number: 319011675
Status: Excess
Base Closure

Comment: 160 sq. ft.; 1 story wood and metal frame; storage shed for housing unit; scheduled to be vacated 8/15/90.

Bldg. 65

Wherry Housing Annex
6400 Stratford Avenue
St. Louis, MO Co: St. Louis
Landholding Agency: COE
Property Number: 319011676
Status: Excess
Base Closure

Comment: 160 sq. ft.; 1 story wood and metal frame; storage shed for housing unit; scheduled to be vacated 8/15/90.

Bldg. 66

Wherry Housing Annex
6400 Stratford Avenue
St. Louis, MO Co: St. Louis
Landholding Agency: COE
Property Number: 319011677
Status: Excess
Base Closure

Comment: 160 sq. ft.; 1 story wood and metal frame; storage shed for housing unit; scheduled to be vacated 8/15/90.

Bldg. 67

Wherry Housing Annex
6400 Stratford Avenue
St. Louis, MO Co: St. Louis
Landholding Agency: COE
Property Number: 319011678
Status: Excess
Base Closure

Comment: 160 sq. ft.; 1 story wood and metal frame; storage shed for housing unit; scheduled to be vacated 8/15/90.

Bldg. 68

Wherry Housing Annex
6400 Stratford Avenue
St. Louis, MO Co: St. Louis
Landholding Agency: COE
Property Number: 319011679
Status: Excess
Base Closure

Comment: 160 sq. ft.; 1 story wood and metal frame; storage shed for housing unit; scheduled to be vacated 8/15/90.

Texas

Bldg. 2228
Battalion Avenue
Ft. Hood, TX Co: Coryell
Landholding Agency: Army
Property Number: 219014604
Status: Unutilized

Comment: 2025 sq. ft.; 1 story; needs rehab; most recent use—administrative office.
Universe of Properties:

Total.....	399
Suitable.....	54
Suitable buildings.....	53
Suitable land.....	1
Unsuitable.....	345
Unsuitable buildings.....	345
Unsuitable land.....	0

Number of resubmissions.....0

[FR Doc. 90-13735 Filed 6-14-90; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR**Office of the Secretary****San Joaquin Valley Drainage Program—California**

AGENCY: Interior.

ACTION: Notice.

SUMMARY: The Citizens Advisory Committee for the San Joaquin Valley Drainage Program will meet on Monday, July 16, 1990, at the Plum Tree Plaza Inn, 111 East March Lane, Stockton, California, at 10 a.m.

The meeting is open to the public. Persons wishing to address the Committee will be allowed five minutes to present their statement.

The facilities and rooms where the meeting will be held are accessible to the handicapped. Hearing-impaired, visual-impaired, or mobility-impaired persons planning to attend may arrange for special assistance by calling Curtis Smith at 916-978-4911.

FOR FURTHER INFORMATION CONTACT:

A copy of the agenda for the meeting may be acquired from: Edgar A. Imhoff, Program Manager, San Joaquin Valley Drainage Program, 2800 Cottage Way, Room W-2143, Sacramento, California 95825-1898, Phone: 916-978-4983 (FTS 496-4983).

Telephone inquiries may also be made to Carroll Hamon or Robert Horton at 916-978-4982 (FTS 460-4982).

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended to December 12, 1980.

Dated: June 7, 1990.

Edgar A. Imhoff,

Program Manager, San Joaquin Valley Drainage Program.

[FR Doc. 90-13867 Filed 6-14-90; 8:45 am]

BILLING CODE 4310-09-M

Bureau of Land Management

[ID-030-4830-12]

Idaho Falls District Advisory Council Tour; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Tour of the Idaho Falls District Advisory Council.

SUMMARY: The Idaho Falls District Advisory Council will meet Thursday,

July 26, 1990. Notice of this meeting is in accordance with Public Law 92-463. The tour will begin at 8 a.m. at the Idaho Falls District Office on 940 Lincoln Road, Idaho Falls, Idaho. The tour is open to the public; however individuals must provide their own transportation. Public comments will be accepted between 9 a.m. and 9:30 a.m. at the Pocatello Resource Area office in the Federal Building, Pocatello, Idaho.

The agenda of the Advisory council tour includes travel through the southeastern part of the District. Specific agenda items include: (1) Review of the Indian Rocks proposal by Boy Scouts of America. (2) Birch Power Companies' proposal for water impoundment on the Bear River. This involves a right-of-way application which if approved would require amending the Pocatello Resource Management Plan and Bear River Area of Critical Environmental concern.

Dated: June 8, 1990.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 90-13868 Filed 6-14-90; 8:45 am]

BILLING CODE 4310-GG-M

[CA-050-4212-14; CA 24024]

Realty Actions; Sales, Leases, etc.; California; Correction

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Correction to notice of realty action; noncompetitive sale of public lands in Siskiyou County; California.

SUMMARY: The Supplementary Information portion of the Notice of Realty Action, published on page 53762 of the Federal Register, Volume 54, No. 249, on December 29, 1989, is hereby corrected as follows:

The patent, when issued, will contain a reservation to the United States for ditches and canals, and will be subject to the following existing right-of-ways:

SAC 045263 Civil Aeronautics Administration
SAC 046581 Pacific Power and Light Co.
SAC 059035 Siskiyou Telephone Company
CA 16499 Siskiyou Cablevision

All other terms and conditions of the previous Notice remain unchanged.

ADDRESSES: Questions regarding this correction may be directed to: Redding Resource Area Office, Bureau of Land Management, 355 Hemsted Drive, Redding, CA 96002.

Mark Morse,

Area Manager.

[FR Doc. 90-13869 Filed 6-14-90; 8:45 am]

BILLING CODE 4310-40-M

[UT-020-00-4212-13; U-66609]

Salt Lake District; Realty Action**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of realty action. Exchange of lands in Box Elder and Tooele Counties, Utah.**SUMMARY:** The following described public land is being considered for exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1716):

Description	Acres
T. 3N., R. 17W. SLM:	
Sec. 7, All	131.00
Sec. 18, All	634.00
T. 4N., R. 17W. SLM:	
Sec. 6, Lots 1-7, S½NE¼, SE¼	674.16
Sec. 7, Lots 3, 4, E½SW¼, SE¼	310.90
Sec. 8, All	640.00
Sec. 17, All	640.00
Sec. 18, Lots 1-4, E½, E½W½	622.24
Sec. 19, Lots 1-4, E½, E½W½	623.04
Sec. 20, All	640.00
Sec. 28, All	640.00
Sec. 29, All	640.00
Sec. 30, Lots 1-4, E½, E½W½	623.84
Sec. 31, Lots 1-4, E½, E½W½	624.52
Sec. 33, All	640.00
T. 5N., R. 17W. SLM:	
Sec. 20, All	640.00
Sec. 28, All	640.00
Sec. 30, Lots 1-4, E½, E½W½	638.96
T. 2N., R. 18W. SLM:	
Sec. 4-9, All (unsurveyed)	4265.00
Sec. 17-20, All (unsurveyed)	2536.00
T. 3N., R. 18W. SLM:	
Sec. 7-15, All (unsurveyed)	2758.00
Sec. 17-23, All (unsurveyed)	4928.00
Sec. 27-31, All (unsurveyed)	3650.00
Sec. 33-34, All (unsurveyed)	1280.00
T. 4N., R. 18W. SLM:	
Sec. 4, Lots 1-4, S½NE¼, S½	694.32
Sec. 6, Lots 1-7, S½NE¼, SE¼	669.93
Sec. 8, All	640.00
Sec. 10, All	640.00
Sec. 12, All	640.00
Sec. 13, All	640.00
Sec. 14, All	640.00
Sec. 15, S½	320.00
Sec. 18, Lots 1-4, E½, E½W½	628.98
Sec. 20-29, All	6400.00
Sec. 30, Lots 1-4, E½, E½W½	623.07
Sec. 31, Lots 1, 4, E½, E½W½	551.84
Sec. 33-35, All	1920.00
T. 5N., R. 18W. SLM:	
Sec. 14, All	640.00
Sec. 20, All	640.00
Sec. 22, All	640.00
Sec. 24, All	640.00
Sec. 26, All	640.00
Sec. 28, All	640.00
Sec. 30, Lots 1-4, E½, E½W½	656.24
Sec. 34, All	640.00
T. 2N., R. 19W. SLM:	
Sec. 8-15, All (unsurveyed)	2365.00
Sec. 17, All (unsurveyed)	362.00
Sec. 20-24, All (unsurveyed)	2925.00
Sec. 25, N½ (unsurveyed)	320.00
Sec. 26-29, All (unsurveyed)	2268.00
Sec. 33, All (unsurveyed)	640.00
Sec. 34, N½ (unsurveyed)	320.00

Description	Acres
T. 3N., R. 19W. SLM:	
Sec. 12, E½E½, W½NW¼, S½	400.00
SW¼, W½SE¼	640.00
Sec. 13, All	640.00
Sec. 22-27, All	3840.00
Sec. 34-35, All	1280.00
Total acres	64,944.04

Final determination on the exchange will await completion of an environmental analysis. In accordance with the regulations in 43 CFR 2201.1(b), the publication of this notice will segregate the public lands as described above, from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws.

Information on the exchange is available from the District Manager, Bureau of Land Management, Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119.

Chris Nagao,
Acting Salt Lake District Manager.

[FR Doc. 90-13906 Filed 8-14-90; 8:45 am]

BILLING CODE 4310-DQ-M

Fish and Wildlife Service

Notice of Availability of a Draft Environmental Assessment on the Proposed Issuance of Permits for Removing a Limited Number of Florida Panthers From the Wild To Establish a Captive Breeding Program

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice.

SUMMARY: This Notice advises the public that the Fish and Wildlife Service has prepared and is making available a draft Environmental Assessment for the proposed issuing of endangered species permits for removing a limited number of Florida panthers (*Felis concolor coryi*) from the wild population to establish a captive population. Copies of the draft Environmental Assessment can be obtained by making requests to the address below. Individuals that have already made a request for a copy of the Environmental Assessment and/or have written to the Fish and Wildlife Service about this proposal will automatically receive a copy. Information meetings for the purpose of providing additional opportunity for the public to learn about the proposed program are being scheduled as indicated below. This Notice is being furnished under provisions of the National Environmental Policy Act Regulations (40 CFR 1501.7) to obtain comments and information from other agencies and the

public on the draft Environmental Assessment. Following an appropriate public comment and review process, the Fish and Wildlife Service anticipates that a decision on issuing permits could be made by the Fall of 1990.

INFORMATION MEETINGS ARE SCHEDULED AS FOLLOWS:

July 10, 1990—7 p.m. Holiday Inn Tampa International Airport, 4500 West Cypress Street, Tampa, Florida 33622
July 11, 1990—7 p.m. Palm Beach Community College, 4200 Congress Avenue, Lake Worth, Florida 33461
July 12, 1990—7 p.m. Gainesville Hilton, 2900 SW. 13th Street, Gainesville, Florida 32608

DATES: Written comments and information should be received by August 15, 1990.

ADDRESS: Comments should be addressed to James W. Pulliam, Jr., Regional Director, U.S. Fish and Wildlife Service, 75 Spring Street, SW., Atlanta Georgia 30303.

FOR FURTHER INFORMATION CONTACT:

Dennis B. Jordan, Florida Panther Recovery Coordinator, U.S. Fish and Wildlife Service, 117 Newins-Ziegler Hall, University of Florida, Gainesville, Florida 32611-0307, telephone: 904/392-1861.

SUPPLEMENTARY INFORMATION: The Florida panther originally ranged from eastern Texas or western Arkansas/Louisiana eastward through Arkansas, Louisiana, Mississippi, Alabama, Georgia, Florida, and parts of Tennessee and South Carolina. The Florida panther has been virtually eliminated from its entire former range. This was initially due to persecution in the form of shooting and trapping, which started with this country's early settlers. Later, habitat destruction further exacerbated the panther's decline. The only known population of the Florida panther is found in the Big Cypress Swamp/ Everglades region of south Florida. This population is estimated to number only 30 to 50 animals.

Low numbers and the single population situation makes the panther extremely vulnerable to extinction through either a catastrophic event (e.g., disease outbreak) or insidious genetic deterioration (e.g., genetic drift, inbreeding). Genetic variability and viability within the population is limited and inbreeding has been documented. These conditions, coupled with the application of sound population biology and genetic principles, indicate that the Florida panther could never be biologically secure under a single population situation.

Information and data presented and/or developed during a Population Viability Analysis Workshop in January 1989, and a Species Survival Planning Workshop in October/November 1989, indicate that under existing conditions the panther population would be expected to lose genetic diversity at an accelerated rate, beginning with a projected present level of 3-7 percent per generation, and extinction would be probable in 25-40 years. The Fish and Wildlife Service has thoroughly explored and evaluated available courses of action and scenarios for providing security against extinction and has concluded that the successful establishment of a captive population offers the most feasible, and possibly only, course of action to ensure the long-term survival and recovery of the panther.

The Fish and Wildlife Service believes that the proposed course of action provides the opportunity and possesses appropriate safeguards to not only successfully establish a captive panther population, but accomplish it in such a way as to maintain the integrity and viability of the existing wild population. Under the proposed plan, a captive population representative of existing genetic materials from the wild population would be incrementally established over a 3- to 6-year period. Select kittens would be utilized to obtain complete genetic representation for the captive population to the extent possible. Other animals would be used to fill genetic gaps. Based on existing population and reproductive data, the Fish and Wildlife Service believes that the current wild population is fully capable of sustaining itself through the proposed activity with no significant impacts in terms of total population numbers, overall composition, or viability.

Additional information on the overall Florida panther recovery program and the species survival plan are contained in the Florida Panther Recovery Plan (1987) and the Florida Panther Population Viability Analysis/Species Survival Plan (1990), respectively. Copies of these documents are available through the Fish and Wildlife Reference Service, 1-800-582-3421 or (301) 492-6403, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814.

The environmental review of this proposal will be conducted in accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et seq.), National Environmental Policy Act Regulations (40 CFR Parts 1500-1508), and other appropriate Federal

regulations and Fish and Wildlife procedures for compliance with those regulations.

Dated: June 8, 1990.
James W. Pulliam,
Regional Director.
[FR Doc. 90-13871 Filed 6-14-90; 8:45 am]
BILLING CODE 4310-55-M

Minerals Management Service

[DES 90-17]

Availability of Second Draft Environmental Impact Statement and Location and Date of Public Hearing on Alaska Proposed Mining Program Lease Sale in Norton Sound

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Management Service has prepared a second draft Environmental Impact Statement (EIS) relating to the proposed 1991 Outer Continental Shelf (OCS) Mining Program Lease Sale in Norton Sound. The proposed sale will offer for lease approximately 147,050 acres.

Single copies of the draft EIS can be obtained from the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99503-4302. Attention: Public Information. Copies can also be requested by telephone, (907) 261-4435.

Copies of the draft EIS will also be available for inspection in the following public libraries: Alaska Historical Library, Juneau, Alaska; Alaska Pacific University Library, 1531 Crescent Avenue, Anchorage, Alaska; Alaska State Library, Juneau, Alaska; Hooper Bay Public Library, Hooper Bay, Alaska; Gambell Community Library and Learning Center, Gambell, Alaska; George Francis Memorial Library, Kotzebue, Alaska; Golovin Community Library, Golovin, Alaska; Kegoyah Kozga Public Library, Nome, Alaska; Kingikme Public Library, Wales, Alaska; Koyuk City Library, Koyuk, Alaska; Kuskokwim Consortium Library, Bethel, Alaska; McQueen School Library, Kivalina, Alaska; North Slope Borough School Library, Barrow, Alaska; Northern Alaska Environmental Center Library, 218 Driveway Street, Fairbanks, Alaska; Palmer Public Library, 655 S. Valley Way, Palmer, Alaska; Savoonga Public Library, Savoonga, Alaska; Shaktoolik School Library, Shaktoolik, Alaska; Stebbins Community Library, Stebbins, Alaska; Ticasuk Library, Unalakleet, Alaska; Tikigaq Library, Point Hope, Alaska; University of Alaska, Elmer E. Rasmuson Library,

Fairbanks, Alaska; University of Alaska, Government Documents Library, 3211 Providence Drive, Anchorage, Alaska; Z.J. Loussac Public Library, 3600 Denali Street, Anchorage, Alaska.

In accordance with 30 CFR 256.26, the MMS will hold a public hearing in order to receive comments and suggestions relating to the EIS. The hearing will be held on July 18, 1990, at 7 p.m., at the Mini Convention Center, Nome Alaska.

The hearing will provide the Secretary of the Interior with information from Government agencies and the public which will help in the evaluation of the potential effects of the proposed lease sale.

Interested individuals, representatives of organizations, and public officials wishing to testify at the hearing are asked to contact the Regional Director at the above address or by telephone with Ray Emerson, (907) 261-4652, or Tim Holder, (907) 261-4597, my Monday, July 16, 1990.

Time limitation may make it necessary to limit the length of oral presentations to 10 minutes. An oral statement may be supplemented by a more complete written statement which may be submitted to a hearing official at the time of oral presentation or by mail until July 30, 1990. This will allow those unable to testify at a public hearing an opportunity to make their views known and for those presenting oral testimony to submit supplemental information and comments.

Comments concerning the second draft EIS will be accepted until July 30, 1990, and should be addressed to the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99508-4302.

Dated: June 8, 1990.
Ed Cassidy,
Deputy Director, Minerals Management Service.

Approved:
Jonathan P. Deason,
Director, Office of Environmental Affairs.
[FR Doc. 90-13892 Filed 6-14-90; 8:45 am]
BILLING CODE 4310-MR-M

Outer Continental Shelf (OCS) Mining Program; Notice of Availability, Proposed Leasing, and Norton Sound Lease Sale

The Proposed Leasing Notice for the Outer Continental Shelf (OCS) Mining Program, Norton Sound Lease Sale, may be obtained by written request to the Alaska OCS Region, Minerals Management Service, Library, 949 East

36th Avenue, room 110, Anchorage, Alaska 99508-4302, or by telephone (907) 261-4435.

The Final Leasing Notice will be published in the *Federal Register* at least 30 days prior to the date of bid opening. Bid opening is scheduled for February 1991.

With regard to leasing of minerals other than oil, gas, and sulphur on the OCS, the Director of the Minerals Management Service, pursuant to 30 CFR 281.16(b), has provided the State of Alaska the opportunity to review the Proposed Leasing Notice.

Comments on the Proposed Leasing Notice should be submitted to the Program Director, Office of Strategic and International Minerals, Minerals Management Service, 381 Elden Street, (MS 649), Herndon, Virginia 22070-4817, no later than 60 days after the publication of this Notice of Availability.

This Notice is hereby published pursuant to 30 CFR 281.16(b), as a matter of information to the public.

Dated: June 11, 1990.

Barry A. Williamson,

Director, Minerals Management Service.

[FR Doc. 90-13891 Filed 6-14-90; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-448, 499, and 450 (Final)]

Sweaters Wholly or in Chief Weight of Manmade Fibers From Hong Kong, The Republic of Korea, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: June 11, 1990.

FOR FURTHER INFORMATION CONTACT:

Jonathan Seiger (202-252-1177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION: On April 27, 1990, the Commission instituted the subject investigations and established a schedule for their conduct (55 FR 19369, May 9, 1990). Subsequently, the

Department of Commerce extended the date for its final determination concerning Hong Kong from July 5, 1990 to July 19, 1990, and for its final determinations concerning the Republic of Korea and Taiwan from July 5, 1990 to August 2, 1990. The Commission, therefore, is revising its schedule in the investigations to conform with Commerce's new schedules.

The Commission's new schedule for the investigations is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than July 30, 1990; the prehearing conference will be held at the U.S. International Trade Commission Building on August 2, 1990; the prehearing staff report will be placed in the nonpublic record on July 23, 1990; the deadline for filing prehearing briefs is August 3, 1990 (nonbusiness proprietary version due August 6, 1990); the hearing will be held at the U.S. International Trade Commission Building on August 9, 1990; the deadline for filing posthearing briefs is August 14, 1990 (nonbusiness proprietary version due August 15, 1990), and the deadline for Parties to file additional written comments on business proprietary information is August 17, 1990 (nonbusiness proprietary version due August 20, 1990).

For further information concerning these investigations see the Commission's notice of investigations cited above and the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: June 12, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-13930 Filed 6-14-90; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercompany Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercompany hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office:

Howell Corporation, 1010 Lamar Street, Suite 1800, Houston, Texas 77002-9990.

2. Wholly owned subsidiaries which will participate in the operations: Howell Transportation Services, Inc., P.O. Box 1089, Channelview, Texas 77530-1089, State of incorporation: Delaware.

(i) Howell Chemical Systems, Inc., P.O. Box 429, Channelview, Texas 77530-0429, State of incorporation: Delaware

(ii) Howell Crude Oil Company, 1010 Lamar Street, Suite 1800, Houston, Texas 77002, State of incorporation: Delaware

(iii) Howell Hydrocarbons Incorporated, 7811 South Presa, San Antonio, Texas 78223-3532, State of incorporation: Delaware

(iv) Howell Petroleum Corporation, 1010 Lamar Street, Suite 1800, Houston, Texas 77002, State of incorporation: Delaware.

B. 1. The parent corporation is Pepsi-Cola Bottling Company of Corbin, Inc. Its address is 1000 West 18th Street, Corbin, KY 40701. It is a Kentucky corporation.

2. Wholly owned subsidiaries which will participate in the operations are: Commodities Unlimited, Inc. d/b/a Valley Distributing. Its address is the same as that shown above for its parent.

C. 1. Parent corporation and address of principal office:

Safeway Inc., 430 Jackson Street, Oakland, California 94660.

2. Wholly-owned subsidiaries which will participate in the intercompany hauling operations, and state(s) of incorporation:

(i) Safeway Canada Holdings, Inc., a Delaware corporation;

(ii) Safeway Australia Holdings, Inc., a Delaware corporation;

(iii) Safeway U.S. Holdings, Inc., a Delaware corporation;

(iv) Safeway Stores, Inc. of Wyoming, a Wyoming corporation;

(v) Glencourt, Inc., a Delaware corporation;

(vi) Canada Safeway, Limited, a Canadian corporation;

(vii) Safeway Stores of W. Nebraska, Inc., a Delaware corporation;

(viii) Salvage, Inc., a Delaware corporation;

(ix) Oakland Property Brokerage, Inc., a Delaware corporation;

(x) Safeway Trucking, Inc., a Delaware corporation;

(xi) Pak-N-Save, Inc., a Delaware corporation;

(xii) Safeway Dallas, Inc., a Delaware corporation;

(xiii) Safeway Denver, Inc., a Delaware corporation;

- (xiv) Safeway Richmond, Inc., a Delaware corporation;
- (xv) Safeway Southern California, Inc., a Delaware corporation;
- (xvi) Safeway Supply, Inc., a Delaware corporation;
- (xvii) Safeway New Canada, Inc., a Delaware corporation;
- (xviii) Safeway Stores 18, Inc., a Delaware corporation;
- (xix) Safeway Stores 26, Inc., a Delaware corporation;
- (xx) Safeway Stores 28, Inc., a Delaware corporation;
- (xxi) Safeway Stores 31, Inc., a Delaware corporation;
- (xxii) Safeway Stores 42, Inc., a Delaware corporation;
- (xxiii) Safeway Stores 43, Inc., a Delaware corporation;
- (xxiv) Safeway Stores 44, Inc., a Delaware corporation;
- (xxv) Safeway Stores 45, Inc., a Delaware corporation;
- (xxvi) Safeway Stores 46, Inc., a Delaware corporation;
- (xxvii) Safeway Stores 47, Inc., a Delaware corporation;
- (xxviii) Safeway Stores 48, Inc., a Delaware corporation;
- (xxix) Safeway Stores 49, Inc., a Delaware corporation;
- (xxx) Safeway Stores 50, Inc., a Delaware corporation;
- (xxxi) Safeway Stores 58, Inc., a Delaware corporation;
- (xxxii) Safeway Stores 59, Inc., a Delaware corporation;
- (xxxiii) Safeway Stores 64, Inc., a Delaware corporation;
- (xxxiv) Safeway Stores 67, Inc., a Delaware corporation;
- (xxxv) Safeway Stores 68, Inc., a Delaware corporation;
- (xxxvi) Safeway Stores 69, Inc., a Delaware corporation;
- (xxxvii) Safeway Stores 70, Inc., a Delaware corporation;
- (xxxviii) Safeway Stores 71, Inc., a Delaware corporation;
- (xxxix) Safeway Stores 72, Inc., a Delaware corporation;
- (xl) Safeway Stores 73, Inc., a Delaware corporation;
- (xli) Safeway Stores 74, Inc., a Delaware corporation;
- (xlii) Safeway Stores 75, Inc., a Delaware corporation;
- (xliii) Safeway Stores 76, Inc., a Delaware corporation;
- (xliv) Safeway Stores 77, Inc., a Delaware corporation;
- (xlv) Safeway Stores 78, Inc., a Delaware corporation;
- (xlvi) Safeway Stores 79, Inc., a Delaware corporation;
- (xlvii) Safeway Stores 80, Inc., a Delaware corporation;
- (xlviii) Safeway Stores 81, Inc., a Delaware corporation;

- (xlix) Safeway Stores 82, Inc., a Delaware corporation;
 - (l) Safeway Stores 85, Inc., a Delaware corporation;
 - (li) Safeway Stores 86, Inc., a Delaware corporation;
 - (lii) Safeway Stores 87, Inc., a Delaware corporation;
 - (liii) Safeway Stores 88, Inc., a Delaware corporation;
 - (liv) Safeway Stores 89, Inc., a Delaware corporation;
 - (lv) Safeway Stores 90, Inc., a Delaware corporation;
 - (lvi) Safeway Stores 91, Inc., a Delaware corporation;
 - (lvii) Safeway Stores 92, Inc., a Delaware corporation;
 - (lviii) Safeway Stores 96, Inc., a Delaware corporation;
 - (lxi) Safeway Stores 97, Inc., a Delaware corporation;
 - (lxii) Safeway Stores 98, Inc., a Delaware corporation;
- D. 1. Parent Corporation and address of principal office:
 Vesuvius Crucible Company, 1404 Newton Drive, Champaign, IL 61821, State of Incorporation: Pennsylvania.
2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:
 (i) Vesuvius, U.S.A., 1404 Newton Drive, Champaign, IL 61821, State of Incorporation: Illinois
 (ii) Flo Con Systems, Inc., 1404 Newton Drive, Champaign, IL 61821, State of Incorporation: Illinois

Noreta R. McGee,

Secretary.

[FR Doc. 90-13928 Filed 6-14-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits

have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (48 Stat. 1494; as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the *Federal Register*, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modification issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-

explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, Room S-3014, Washington, DC 20210.

New General Wage Determinations Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

VOLUME III

California:

CA90-5	p. 106a, pp. 106b-106r.
CA90-7	p. 106u, pp. 106v-106ll.

Modifications to General Wage

Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

VOLUME I

Connecticut, CT90-1 (Jan. 5, 1990) ..	p. 63, pp. 66-68, 72.
District of Columbia, DC90-1 (Jan. 5, 1990) ..	p. 79, pp. 80, 82-84, 88.
Massachusetts, MA90-1 (Jan. 5, 1990) ..	p. 399, p. 401.
Maryland, MD90-1 (Jan. 5, 1990) ..	p. 443, pp. 444-448.
Pennsylvania:	
PA90-1 (Jan. 5, 1990)	p. 909, pp. 910, 912, pp. 913, 915.
PA90-2 (Jan. 5, 1990)	p. 921, pp. 922, 924-926.
PA90-5 (Jan. 5, 1990)	p. 951, pp. 952-954.
PA90-6 (Jan. 5, 1990)	p. 965, pp. 966, 968.
PA90-8 (Jan. 5, 1990)	p. 987, pp. 988-990, 992.
PA90-11 (Jan. 5, 1990) ..	p. 1009, p. 1010.
PA90-12 (Jan. 5, 1990) ..	p. 1013, p. 1015.
PA90-14 (Jan. 5, 1990) ..	p. 1019, p. 1023.
PA90-16 (Jan. 5, 1990) ..	p. 1033, p. 1034.
PA90-17 (Jan. 5, 1990) ..	p. 1035, pp. 1036-1037.
PA90-18 (Jan. 5, 1990) ..	p. 1041, p. 1042.
PA90-19 (Jan. 5, 1990) ..	p. 1049, pp. 1050-1052.
PA90-20 (Jan. 5, 1990) ..	p. 1055, pp. 1056-1057.

PA90-21 (Jan. 5, 1990) ..	p. 1063, pp. 1064-1065.
PA90-22 (Jan. 5, 1990) ..	p. 1067, pp. 1068, 1071.
PA90-23 (Jan. 5, 1990) ..	p. 1079, pp. 1080-1082.
PA90-24 (Jan. 5, 1990) ..	p. 1085, pp. 1086-1087.
PA90-26 (Jan. 5, 1990) ..	p. 1093, 1094-1095.
Virginia, VA90-33 (Jan. 5, 1990) ..	p. 1293, p. 1294.
West Virginia:	
WV90-2 (Jan. 5, 1990)...	p. 1391, pp. 1393, 1396.
WV90-3 (Jan. 5, 1990)...	p. 1415, pp. 1417-1419.

VOLUME II

Indiana, IN90-3 (Jan. 5, 1990) ..	p. 267, p. 268.
Minnesota:	
MN90-5 (Jan. 5, 1990) ...	p. 553, pp. 554-556.
MN90-12 (Jan. 5, 1990) ..	p. 605, p. 606.

VOLUME III

California, CA90-6 (Jan. 5, 1990) ..	p. 106s, p. 106t.
Oregon, OR90-1 (Jan. 5, 1990) ..	p. 309, p. 312.
Washington:	
WA90-1 (Jan. 5, 1990) ..	p. 369, pp. 373-377.
WA90-2 (Jan. 5, 1990) ..	p. 395, pp. 396-398.
WA90-3 (Jan. 5, 1990) ..	p. 405, p. 406.
WA90-7 (Jan. 5, 1990) ..	p. 419, p. 420.
WA90-8 (Jan. 5, 1990) ..	p. 425, pp. 426-427.
WA90-9 (Jan. 5, 1990) ..	p. 431, pp. 432-433.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon And Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 8th Day of June 1990.

Alan L. Moss,

Director, Division of Wage Determinations.
[FR Doc. 90-13762 Filed 6-14-90; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Meeting; Working Group on Social/ Human Issues

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting on the Working Group on Social/Human Issues.

DATES AND TIME: July 9, 1990, 9 a.m.-5 p.m. and July 10, 1990, 8:30 a.m.-5:30 p.m.

PLACE: July 9, 1990, Parkland Memorial Hospital Auditorium, 5201 Harry Hines Boulevard, Dallas, Texas 75235, (214) 590-8000.

July 10, 1990, Dallas Public Library Auditorium, 1515 Young Street at Ervay, Dallas, Texas 75201, (214) 670-7800.

TYPE OF MEETING: Open.

FOR FURTHER INFORMATION CONTACT: Maureen Byrnes, Executive Director, The National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street, NW., Suite 815, Washington, DC 20006 (202) 254-5125. Records shall be kept of all Commission proceedings and shall be available for public inspection at this address.

AGENDA: On July 9 and 10, 1990 the Working Group on Social/Human Issues of the Commission will hold a hearing to (1) Supplement the Working Group's examination of the relationship of HIV testing and early intervention with particular attention to the views of public health officials and people from Region IV of the Public Health Service, (2) commence an examination of the range of human and social services needed by people affected by the HIV/AIDS epidemic with an emphasis on the current barriers to the access of these services, and (3) learn about the human and social services available to the citizens of Dallas and the southwestern region of the United States who are affected by the HIV/AIDS epidemic.

Time will be provided on both days for comments from the public
Maureen Byrnes,
Executive Director.
 [FR Doc. 90-13894 Filed 6-14-90; 8:45 am]
 BILLING CODE 6820-CN-M

NUCLEAR REGULATORY COMMISSION

[Docket No. STN 50-344]

Portland General Electric Co. (Trojan Nuclear Plant, Unit 1); Exemption

I

By letter dated April 18, 1990, the Portland General Electric Company (PGE, the licensee), owner and operator of the Trojan Nuclear Plant, requested an exemption from certain requirements of 10 CFR part 50, appendix J, regarding testing of containment airlock door equalizing valves. Trojan is a pressurized water reactor located in Columbia County, Oregon, on the Columbia River. Appendix J of 10 CFR part 50 requires the licensee to perform primary containment leakage testing.

II

Appendix J of 10 CFR part 50 requires that testing of containment airlock equalizing valves be included in the airlock leakage tests as addressed in Trojan Technical Specification (TTS) 3.6.1.3, "Containment Air Locks." Because of its design, however, the equalizing valves on the inner door of each airlock cannot be tested in the manner required by appendix J, PGE, therefore, requested an exemption from a requirement of appendix J for that valve, and proposed an alternative test method to demonstrate the integrity of the seals for that valve. The proposed test would utilize the existing reduced pressure test port to test the leak-tightness of the o-ring seals of the equalizing valve. Any leakage (rate) would be multiplied by the ratio of the airlock barrel pressure and the test pressure, and added to the airlock barrel leakage rate.

This type of test is necessary and appropriate for several reasons. It is a reasonable method for testing the integrity of the o-ring seals, and quantifying any leakage as a contribution to the total leak rate of the airlock at design pressure P_d (60 psi). The test performed in this manner gives a measure of the leakage in the seals at design pressure despite the fact that the valve, designed to protect against a

design LOCA pressure in the opposite direction (i.e., from inside the containment), cannot withstand (by design) a pressure of 60 psi in the opposite direction (i.e., from the airlock side of the valve). The test, while not conforming to the appendix J requirement for Type B testing of the airlock seals, is the best possible approximation, and involves the minimum deviation from the prescribed appendix J Type B test consistent with the limits imposed by equipment design.

The proposed exemption to the testing requirement of 10 CFR part 50, appendix J, for the containment airlock door equalizing valve, and the proposed alternative testing methods, have been considered by the NRC staff. For reasons set forth above, the staff finds the requested exemption acceptable.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present to justify the exemption.

In the circumstances of this case application of the regulation would not serve the underlying purpose of the rule. Because of the design limits of the equipment, the tests cannot be performed as required by the regulation. The tests to be performed as proposed satisfy the underlying purpose of the requirement, to measure the leak rate of the airlock as part of the overall measurement of the leak tightness of the containment.

III

Accordingly, the Commission hereby grants an exemption as described in section II above from compliance with the requirements of appendix J of 10 CFR part 50, section III.D.2.b(i). The licensee may perform the proposed test of the inner airlock door as described as an alternative to fulfilling the testing requirements of 10 CFR part 50, appendix J, section III.D.2.b(i) for the inner airlock door equalizing valves.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (June 5, 1990, 55 FR 22975).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 8th day of June 1990.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-13910 Filed 6-14-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-237 and 50-249]

Withdrawal of Application for Amendment to Provisional and Facility Operating Licenses; Commonwealth Edison Co., Dresden Nuclear Power Station, Units 2 and 3

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Commonwealth Edison Company (the licensee) to withdraw its October 29, 1985, application for proposed amendment to Provisional and Facility Operating License Nos. DPR-19 and -25, for the Dresden Nuclear Power Station, Units 2 and 3, respectively, located in Grundy County, Illinois.

The proposed amendment would have revised the facility Technical Specifications to implement the leak detection requirements of Generic Letter 84-11 and revise the time period requirements for conducting the in-service inspection (ISI) programs to reflect the second 10 year ISI period.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on April 23, 1986 (51 FR 15394). However, by letter dated August 4, 1989, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 29, 1985, and the licensee's letter dated August 4, 1989, which withdrew the application for license amendment.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Dated at Rockville, Maryland, this 8th day of June, 1990.

For the Nuclear Regulatory Commission.
 Patricia L. Eng,
*Project Manager, Project Directorate III-2,
 Division of Reactor Projects—III, IV, V &
 Special Projects, Office of Nuclear Reactor
 Regulation.*
 [FR Doc. 90-13911 Filed 6-14-90; 8:45 am]
 BILLING CODE 7590-01-M

DEPARTMENT OF STATE

[Public Notice 1219]

Foreign Assistance Determinations; Czechoslovakia

Pursuant to section 620(f)(2) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2370(f)(2)), and section 1-201(a)(10) of Executive Order No. 12163, as amended, I hereby determine that the removal of the Czech and Slovak Federal Republic from the application of section 620(f) of the Foreign Assistance Act is important to the national interest of the United States. I therefore direct that the Czech and Slovak Federal Republic be henceforth removed, for an indefinite period, from the application of section 620(f) of the Foreign Assistance Act, as amended.

This determination shall be reported to the Congress immediately and published in the Federal Register.

James A. Baker III,
Secretary.

[FR Doc. 90-13921 Filed 6-14-90; 8:45 am]
 BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended June 8, 1990

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 46973

Date filed: June 6, 1990

Parties: Members of the International

Air Transport Association

Subject: Japan-USA Resolutions

Proposed Effective Date: July 1, 1990

Docket Number: 46975

Date filed: June 8, 1990

Parties: Members of the International

Air Transport Association

*Subject: Establish Rates & Charges from
 Afghanistan in US Dollars*

Proposed Effective Date: July 1, 1990

Docket Number: 46976

Date filed: June 8, 1990

Parties: Members of the International

Air Transport Association

Subject: Increase from Bulgaria
Proposed Effective Date: July 1, 1990

Docket Number: 46977

Date filed: June 8, 1990

Parties: Members of the International

Air Transport Association

Subject: Europe-South Asian

Subcontinent Resolutions

Proposed Effective Date: July 1, 1990

Phyllis T. Kaylor

Chief, Documentary Services Division.

[FR Doc. 90-13930 Filed 6-14-90; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 8, 1990

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 46968

Date filed: June 4, 1990

Due Date for Answers, Conforming

Applications, or Motion to Modify

Scope: July 2, 1990

*Description: Application of United Air
 Lines, Inc. pursuant to section 401 of
 the Act and subpart Q of the
 Regulations requests a certificate of
 public convenience and necessity to
 authorize service between points in
 the United States and Berlin,
 Germany.*

Docket Number: 46969

Date filed: June 4, 1990

Due Date for Answers, Conforming

Applications, or Motion to Modify

Scope: July 2, 1990

*Description: Application for United Air
 Lines, Inc. pursuant to section 401 of
 the Act and subpart Q of the
 Regulations, requests a certificate of
 public convenience and necessity to
 authorize service between Chicago,
 Illinois, and Washington, DC, on the
 one hand, and Moscow, U.S.S.R., on
 the other hand.*

Docket Number: 46974

Date filed: June 6, 1990

*Due Date for Answers, Conforming
 Applications, or Motion to Modify
 Scope: June 20, 1990*

*Description: Conforming Application of
 American Airlines, Inc., pursuant to
 section 401 of the Act and subpart Q
 of the Regulations, applies for a
 certificate of public convenience and
 necessity so as to authorize air service
 between Miami, Florida, on the one
 hand, and Cancun, Cozumel, and
 Merida, Mexico, on the other.*

Docket Number: 45348

Date filed: June 7, 1990

Due Date for Answers, Conforming

Applications, or Motion to Modify

Scope: July 5, 1990

*Description: Supplement to the
 Application of Haiti Trans air, S.A.,
 pursuant to section 402 of the Act and
 subpart Q of the Regulations requests
 the issuance of the additional Fort
 Lauderdale, Florida/Port-au-Prince,
 Haiti combination authority
 requested.*

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 90-13948 Filed 6-14-90; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Approval of Noise Compatibility Program Blue Grass Airport Lexington, Kentucky

AGENCY: Federal Aviation
 Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by Lexington-Fayette Urban County Airport Board under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 98-52 (1980). On November 13, 1989, the FAA determined that the noise exposure maps submitted by Lexington-Fayette Urban County Airport Board under part 150 were in compliance with applicable requirements. On May 10, 1990, the Administrator approved the Blue Grass Airport noise compatibility program. Five of the eight recommendations of the program were approved. No program elements relating to new or revised flight procedures for noise abatement were proposed by the airport operator.

EFFECTIVE DATE: The effective date of the FAA's approval of the Blue Grass

Airport noise compatibility program is May 10, 1990.

FOR FURTHER INFORMATION CONTACT: Peggy S. Kelley, 3973 Knight Arnold Road, Suite 105, Memphis, Tennessee 38118-3004; 901-544-3495. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Blue Grass Airport, effective May 10, 1990.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violates the terms of airport grant agreements; or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient

use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatible program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office Memphis, Tennessee.

Lexington-Fayette Urban County Airport Board submitted to the FAA on June 6, 1989, the noise exposure maps, descriptions, and other documentations produced during the noise compatibility planning study conducted from December 1986 through September 1988. The Blue Grass Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on November 13, 1989. Notice of this determination was published in the Federal Register on November 30, 1989.

The Blue Grass Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdiction from the date of study completion to the year 1995. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on November 13, 1989, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained eight proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and

FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective May 10, 1990.

Outright approval was granted for five of the eight specific program elements, three measures were disapproved. One measure was disapproved because it could result in a restriction of certain aircraft of less than 75,000 lbs gross weight without submission of information to support noise benefits. Two measures were disapproved because they were primarily capacity items rather than noise mitigation measures. Two approved measures involve voluntary acquisition of properties very near the airport or possible noise insulation of the properties near the airport. The remaining three recommendations involved land use management strategies including procedures for logging and tracking community complaints and monitoring the progress of noise abatement policies.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on May 10, 1990. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Lexington-Fayette Urban County Airport Board.

Issued in Memphis, Tennessee, June 2, 1990.

Wayne R. Miles,
Acting Manager.

[FR Doc. 90-13938 Filed 6-14-90; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor

vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passengers-carrying aircraft.

DATES: Comments must be received on or before July 16, 1990.

ADDRESS COMMENTS TO: Dockets

Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10380-N	Hydra Rig, Inc., Forth Worth, TX	49 CFR 173.320	To manufacture, mark and sell non-DOT specification portable tanks for shipment of Nitrogen, refrigerated liquid classed as a nonflammable gas, on cargo vessels. (Mode 3.)
10381-N	Defence Technology and Procurement Agency, CH-3000 Berne 25, Switzerland.	49 CFR 175.3, 49 CFR 172.101, column (6)(b).	To authorize a one time shipment of warheads, Rocket with bursting charge, Class A explosive, by cargo aircraft. (Mode 4.)
10382-N	ICI Americas, Inc., Wilmington, DE	49 CFR 173.245(a)	To authorize use of DOT specifications 105J300 tank cars for transport of ethyl phosphonothioic dichloride, anhydrous, classed as corrosive liquid with safety relief valves as prescribed for corrosive material service. (Mode 2.)
10393-N	Chevron Pipe Line company, Beaumont, TX.	49 CFR 173.119	To manufacture, mark and sell non-DOT specification containers described as trailer-mounted displacement meter provers for transportation of flammable liquids. (Mode 1.)
10384-N	Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 173.315	To authorize the use of MC331 Cargo tanks to transport compressed gas, n.o.s., classed as flammable gas in truck load quantities. (Mode 1.)
10385-N	OEA, Inc., Denver, CO	49 CFR Parts 100-177	To authorize shipment of lead azide-based air bag module classed as an explosive power device Class C, packaged in a foam molded polyethylene bag overpacked in a fiberboard box with styrofoam insert and taped closed. (Mode 1, 2, 3.)
10386-N	Hilti Construction Chemical, Inc., Tulsa, OK.	49 CFR 173.1200, 178.33a-2	To authorize nonflammable Aerosol products to be shipped in 2Q containers of 39.4 fl. oz. using the proper shipping name of consumer commodity, ORM-D. (Modes 1, 3, 4, 5.)
10387-N	Olin Corporation—Defense Systems Group, East Alton, IL.	49 CFR 173.102	To authorize shipment of Class C explosives in DOT Specification 17H steel drums. (Mode 1.)
10388-N	The Coca-Cola Company, Atlanta, GA	49 CFR 173.119(b)(4), 178.12	To authorize shipment of extract, flavoring liquid, classed as flammable liquid, in one-gallon polyethylene bottles, packed no more than four to a DOT-12B65 box. (Modes 1, 2, 3.)
10389-N	Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 174.67(i)	To authorize use of an attendee/log system instead of an unloader during the period of unloading of rail cars and while the rail car is connected to the unloading device. (Mode 2.)
10390-N	Container Products, Incorporated, Southfield, MI.	49 CFR 178.100-5, 178.80-7, 178.81-7, 178.82-7, 178.83-7, 178.88-6, 178.98-5, 178.99-5.	To manufacture, mark and sell DOT specification 5 and 6 series drums using round pipe sections instead of rolled U or I-bar sections for shipment of certain hazardous materials. (Mode 1, 2, 3, 4.)
10391-N	Wim Vos International Transport BV, Netherlands.	49 CFR 178.70-11	To authorize shipment of flammable liquids in IMO portable tanks with alternative safety relief valves. (Modes 1, 2, 3.)
10392-N	Riblet Plastics, Bristol, IN	49 CFR 173.119, 173.125, 173.245, 173.249, 173.249(a), 173.250(a), 173.256, 173.257, 173.262, 173.263, 173.264, 173.265, 173.266, 173.269, 173.272, 173.276, 173.277, 173.283, 173.287, 173.288, 173.289, 173.292, 173.297, 173.299(a).	To manufacture, mark and sell a rotationally molded polyethylene tank with a rigid steel frame enclosure for shipment of certain hazardous materials. (Modes 1, 2.)
10393-N	Olin Chemicals, Stamford, CT	49 CFR 173.276(a)(4), 173.276(a)(6)(i), 179.202-14.	To authorize shipment of hydrazine aqueous solutions, classed as a corrosive material in those tank cars and cargo tanks specified under Section 173.276(a)(4), 173.276(a)(6)(i) and 179.202-14 without the current restriction regarding molybdenum content. (Modes 1, 2.)
10394-N	Olin Corporation, Stamford, CT	49 CFR 173.263(a)(12), 179.202-9(b)	To authorize use of DOT specification tank cars made from Type 316 stainless steel for the shipment of not exceeding 42% active sodium chlorite. (Mode 2.)
10395-N	Cryogenic Services Incorporated, Canton, GA.	49 CFR 173.316(c)	To authorize highway transportation of methane, refrigerated liquid, classed as flammable gas in non-DOT specification cylinders built to 4L specification. (Mode 1.)
10396-N	Chevron Pipe Line Company, Salt Lake City, UT.	49 CFR 173.119	To authorize transportation of a non-DOT specification trailer mounted displacement meter prover for shipment of flammable liquids. (Mode 1.)
10400-N	Martin Marietta Ordnance Systems, Inc., Milan, TN.	49 CFR 173.56(a)	To authorize a one time shipment of fused grenades, Class A explosive. (Modes 1, 3.)

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 8, 1990.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 90-13885 Filed 6-14-90; 8:45 am]

BILLING CODE 4910-80-M

Applications for Renewal or Modification of Exemptions or Applications To Become a Party to Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications for Renewal or Modification of Exemptions or Application To Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Except as otherwise noted, renewal application are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before June 28, 1990.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, room

8426, Nassif Building, 400 7th Street SW, Washington, DC.

Application	Applicant	Renewal of exemption
868-X	U.S. Department of Defense, Falls Church, VA.	868
3330-X	Western Zirconium, Inc., Ogden, UT.	3330
3630-X	Mallinckrodt, Inc., Paris, KY	3630
5248-X	3M Co., New Brighton, MN	5248
5600-X	Amoco Oil Co., Whiting, IN	5600
5820-X	ICI Americas, Inc., Wilmington, DE.	5820
6016-X	Langdon Oxygen Co., Texarkana, TX.	6016
6267-X	Bio-Lab, Inc., Decatur, GA	6267
6293-X	Hercules, Inc., Wilmington, DE.	6293
6293-X	Atlas Powder Co., Dallas, TX.	6293
6296-X	Piatte Chemical Co., Greeley, CO.	6296
6296-X	UNIROYAL Chemical Co., Inc., Bethany, CT.	6296
6349-X	Airco Industrial Gases, Murray Hill, NJ.	6349
6349-X	Union Carbide Industrial Gases Inc., Danbury, CT.	6349
6922-X	Halocarbon Products Corp., North Augusta, SC.	6922
6922-X	Great Lakes Chemical Corp., El Dorado, AR.	6922
6999-X	U.S. Department of Defense, Falls Church, VA.	6999
*4453-X	Seco of Arkansas, Inc., Midland, AR.	4453
7052-X	EIC Laboratories, Inc., Norwood, MA.	7052
7052-X	EnScan, Inc., Minneapolis, MN.	7052
7052-X	Toshiba Battery Co., Ltd., Chuo-Ku, Tokyo 104, Japan.	7052
7052-X	Hitachi-Maxell, Ltd., Tokyo, Japan.	7052
7255-X	U.S. Department of Defense, Falls Church, VA.	7255
7268-X	Union Carbide Industrial Gases, Inc., Danbury, CT.	7268
7268-X	Linde Gases of the Midwest, Inc., Hillside, IL.	7268
7268-X	Linde Gases of the West, Inc., San Ramon, CA.	7268
7268-X	Linde Gases of Florida, Tampa, FL.	7268
7466-X	Firmenich Inc., Princeton, NJ.	7466
7468-X	Sunwest Aviation, Ogden, UT.	7468
7650-X	ICI Americas, Inc., Wilmington, DE.	7650
7840-X	General Dynamics Corp./Fort Worth Div., Fort Worth, TX.	7840
8060-X	Parifer S.A.R.L., Paris, France.	8060
8080-X	Occidental Chemical Corp., Dallas, TX.	8080
8236-X	TRW Safety Systems/Mesa, Mesa, AZ.	8236
8472-X	Ohmart Corp., Cincinnati, OH (See Footnote 1).	8472
8473-X	Baker Performance Chemicals, Inc., Houston, TX.	8473
8473-X	Degussa Corp., Ridgefield Park, NJ.	8473
8477-X	Mobay Corp., Pittsburgh, PA.	8477
8526-X	Rohm and Haas Co., Philadelphia, PA.	8526

Application	Applicant	Renewal of exemption
8545-X	Hercules, Inc., Wilmington, DE.	8545
8554-X	Piedmont Explosives, Inc., Statesville, NC.	8554
8554-X	Evenson Explosives, Inc., Morris, IL.	8554
8554-X	Amos L. Dolby Co., Corsica, PA.	8554
8723-X	Alpha, Ireco Inc., Lincoln, CA.	8723
8723-X	IRECO, Inc., Salt Lake City, UT.	8723
8723-X	Econexpress, Inc., Wheaton, IL.	8723
8723-X	Roundup Powder Co., Inc., Miles City, MT.	8723
8723-X	Cherokee Explosives, Inc., Plainville, CT.	8723
8723-X	Explosives Supply Co., Inc., Shirley, MA.	8723
8723-X	A.E. Sibley, Inc., Middlefield, CT.	8723
8741-X	Alpha Aviation, Inc., Dallas, TX.	8741
8826-X	Phoenix Air, Cartersville, GA.	8826
8839-X	Poly Processing Co., Inc., Monroe, LA.	8839
8839-X	Poly Cal Plastics, Inc., French Camp, CA.	8839
8862-X	ARC Chemical Division Balchem Corp., Slate Hill, NY.	8862
8877-X	Union Carbide Chemicals Plastics Co., Inc., Charleston, WV.	8877
8877-X	KTI Chemicals, Inc., Danbury, CT.	8877
8877-X	PCR, Inc., Gainesville, FL.	8877
8891-X	BIC Corp., Milford, CT (See Footnote 2).	8891
8920-X	Applies Companies, San Fernando, CA.	8920
8921-X	Hoover Group, Inc., Beatrice, NE.	8921
8937-X	Spectrolite Consortium, Inc., Madison, IL.	8937
8958-X	De La Mare Engineering, Inc., San Fernando, CA.	8958
8963-X	Atlantic Research Corp., Gainesville, VA.	8963
9061-X	Leonard Joseph Co., & Safesport Manufacturing Co., Denver, CO.	9061
9144-X	Cajun Bag & Supply Co., Crowley, LA (See Footnote 3).	9144
9182-X	Stoneco, Inc., Trinidad, CO.	9182
9270-X	E.I. du Pont de Nemours Co., Wilmington, DE.	9270
9277-X	FMC Corporation—Agricultural Chemical Group, Philadelphia, PA.	9277
9287-X	Shell Pipe Line Corp., Houston, TX.	9287
9388-X	Gulf Central Storage & Terminal Co., Hermann, MO.	9388
9401-X	Arbel-Fauvet-Rail, Paris, France (See Footnote 4).	9401
9426-X	Rheem Container, Corp., Danbury, CT.	9426
9581-X	RAMP Industries, Inc., Denver, CO.	9581
9611-X	Buco Budenbender GmbH & Co., Niederndorf, West Germany.	9611
9623-X	Quick Supply Co., Des Moines, IA.	9623

Application	Applicant	Renewal of exemption
9623-X	Austin Powder Co., Cleveland, OH.	9623
9623-X	Atlas Powder Co., Dallas, TX.	9623
9626-X	Degussa Corp., Ridgefield Park, NJ.	9626
9632-X	Arbel-Fauvet-Rail, Douai, Cedex, France (See Footnote 5).	9632
9634-X	Luxfer USA, Limited, Riverside, CA.	9634
9643-X	Eastman Kodak Co., Rochester, NY.	9643
9646-X	U.S. Department of Defense, Falls Church, VA.	9646
9649-X	U.S. Department of Defense, Falls Church, VA.	9649
9676-X	Mallinckrodt, Inc., Paris, KY.	9676
9702-X	Chase Packaging Corp., Old Greenwich, CT.	9702
9816-X	Amrex Chemical Co., Inc., Binghamton, NY.	9816
9884-X	Puritan-Bennett Corp., Indianapolis, IN (See Footnote 6).	9884
9886-X	Clayton Mark Inc., Rogers, AR.	9886
9887-X	Offshore Marine Engineering Limited, West Midlands, England.	9887
9902-X	Purisar Corp., Sunnyvale, CA.	9902
9915-X	Hercules, Inc., Wilmington, DE.	9915
9916-X	Petrolite Corp., St. Louis, MO.	9916
9933-X	Mobay Corp., Pittsburgh, PA.	9933
9961-X	Brown Measurement, Inc., Kilgore, TX.	9961
9968-X	Moli Energy, Limited, Maple Ridge, B.C., Canada.	9968
10019-X	Structural Composites Industries, Inc., Pomona, CA (See Footnote 7).	10019
10031-X	Universal Cryogenics Corp., Alburis, PA.	10031
10301-X	Fred Hutchinson Cancer Research Center, Seattle, WA.	10301
10354-X	BASF Corp., Parsippany, NJ (See Footnote 8).	10354
10399-X	U.S. Department of Defense (MTSS-S), Falls Church, Va (See Footnote 9).	10399

¹ To authorize an additional model of a non-DOT specification device described as ionization chamber for transportation of argon, classed as compressed gas.

² To renew, and to authorize water, passenger and cargo aircraft as additional modes of transportation.

³ To increase capacity of non-DOT specification flexible bulk bags from 2,200 pounds to 3,300 pounds for shipment of certain oxidizer, n.o.s. and corrosive solid, n.o.s. materials.

⁴ To authorize shipment of ethylchloride, classed as a flammable liquid as an additional commodity.

⁵ To authorize shipment of ethylchloride, classed as a flammable liquid as an additional commodity.

⁶ To authorize an additional model of a non-DOT specification cylinder for transportation of oxygen, pressurized liquid.

⁷ To authorize shipment of compressed air with up to 40% volume oxygen content as an authorized hazardous material in non-DOT specification cylinders.

⁸ To renew exemption originally issued on an emergency basis to authorize shipment of hydrochloric acid in DOT spec. 111A100W5 tank car tanks equipped with an orifice plate in line with the safety

⁹ To reissue exemption originally issued to authorize shipment of a specific device described as rocket ammunition with smoke projectile, Class B explosive by motor vehicle and cargo aircraft only.

Application No.	Applicant	Parties to exemption
3004-p	Narox, Inc., Hopewell, VA	3004
4453-p	Richland Coal Co., Bourbonville, KY.	4453
4453-p	Southern Explosives, Inc., Cleveland, OH.	4453
6016-p	Midwest Airgas, Inc., Fairfield, IA.	6016
6530-p	Sunox, Inc., Charlotte, NC	6530
6563-p	Linde Gases of the Northwest, Inc., Portland, OR.	6563
6661-p	AGA Gas, Inc., Cleveland, OH.	6661
6805-p	Liquid Air Corp., Walnut Creek, CA.	6805
6874-p	Showa Denko America, Inc., New York, NY.	6874
8214-p	Subaru of America, Cherry Hill, NJ.	8214
8554-p	Seco of Arkansas, Inc., Midland, AR.	8554
8723-p	Piedmont Explosives, Inc., Statesville, NC.	8723
9281-p	Owen Oil Tools, Inc., Fort Worth, TX.	9281
9364-p	Wilbur-Ellis Co., Fresno, CA.	9364
9607-p	Exxel Container, Inc., Somerset, NJ.	9607
9723-p	Radiac Research Corp., Brooklyn, NY.	9723
9916-p	Baker Performance Chemicals, Inc., Houston, TX.	9916
10001-p	Midwest Airgas, Inc., Fairfield, IA.	10001
10239-p	Vulcan Chemicals, Birmingham, AL.	10239
10307-p	FMC Corp., Philadelphia, PA.	10307

Application No.	Applicant	Parties to exemption
10307-p	Vulcan Chemicals, Birmingham, AL.	10307
10354-p	Vulcan Chemicals, Birmingham, AL.	10354

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportation Act (49 U.S.C 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 11, 1990.

J. Suzanne Hedgepeth,
Chief, Exemptions Branch, Office of
Hazardous Materials Transportation.

[FR Doc. 90-13886 Filed 6-14-90; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Customs Service

[ADM-9-03-CO:R:P:R 911353 HS]

Public Meetings on Pre-Entry Classification Program

AGENCY: U.S. Customs Service,
Department of the Treasury.

ACTION: Notice of public meetings.

SUMMARY: The pre-entry classification program, effective since January 1989, enables importers to obtain advice on the classification of their merchandise prior to importation. It promotes voluntary compliance, uniformity, and accuracy with regard to processing merchandise. In an effort to expand participation of the trade in the program, Customs is conducting open meetings at various field locations to discuss all aspects of pre-entry classification. This notice sets forth the dates and times that are scheduled for meetings in New York and Chicago.

DATES, LOCATIONS AND TIMES OF MEETINGS:

Location	Date and time	Address
New York	June 21, 1990, 1 p.m.-4 p.m.	U.S. Customs, 6 World Trade Center, room 770, New York, NY 10048.
Chicago	June 28, 1990, 1 p.m.-4 p.m.	U.S. Customs, 7th Floor Courtroom, 610 South Canal Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT:
Richard Dunkel, Quality Assurance
Branch, (202) 377-8239.

SUPPLEMENTARY INFORMATION: Effective
January 1, 1989, Customs instituted, on a

limited test basis, the Pre-Entry ("line review") Classification Program. This program provides reliable classification advice prior to importation, provides importers with more certain classification advice, and enhances

uniformity in classification decisions. Pre-entry classification is specifically designed to render binding classification advice on larger volumes of commodities. The decisions are effective at all ports of entry. The program

promotes voluntary compliance, uniformity and accuracy with regard to processing merchandise.

Based on the success of the program, Customs is looking to expand participation in Pre-Entry Classification. To that end, open meetings have been scheduled at various field locations so that the program can be discussed with the trade and brokerage communities. A notice was published in the *Federal Register* (55 FR 20558) on May 17, 1990, and in the *Customs Bulletin and Decisions* (Volume 24, No. 21) on May 23, 1990, announcing the dates, times and locations of meetings throughout the country. At the time of that notice, open meetings had not yet been scheduled for New York and the North Central Region (Chicago). This document notifies the importing community of the dates, locations and times of the Chicago and New York meetings. A representative from Customs Headquarters and New York will be present at these meetings.

Dated: June 11, 1990.

Samuel H. Banks,

Assistant Commissioner, Commercial Operations.

[FR Doc. 90-13972 Filed 6-14-90; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before July 16, 1990.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2744.

FOR FURTHER INFORMATION CONTACT: Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC

20503, (202) 395-7316. Please do not send applications for benefits to the above addresses.

Dated: June 8, 1990.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Resources Policies.

New Collection

1. Veterans Benefits Administration.
2. 28 CFR 36.4320—Loan Guaranty: Title Evidence Requirements and Occupancy Requirements for Conveyance of Properties to VA by Holders.
3. Not applicable.
4. 38 CFR 36.4320 is proposed to be amended to allow the Secretary to specify the form of title evidence that must be provided when a loan holder conveys a property which was financed with a VA-guaranteed or insured loan that has been terminated to the Secretary.
5. On occasion.
6. Business or other for-profit.
7. 32,000 responses.
8. 4 hours.
9. Not applicable.

[FR Doc. 90-13899 Filed 6-14-90; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 55, No. 118

Friday, June 15, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—June 20, 1990.

PLACE: Hearing Room One—1100 L Street, N.W., Washington, D.C. 20573-0001

STATUS: Open.

MATTERS TO BE CONSIDERED:

Docket No. 90-01—*Security for the Protection of the Public, Maximum Required Performance Amount—Consideration of Comments.*

CONTACT PERSON FOR MORE

INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,
Secretary.

[FR Doc. 90-14057 Filed 6-13-90; 2:06 pm]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, June 20, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed revisions to Regulations H (Membership of State Banking Institutions in the Federal Reserve System) and Y (Bank Holding Companies and Change in Bank Control) regarding guidelines on transition capital standards and capital leverage guidelines for state member banks and bank holding companies. (Proposed earlier for public comment: Docket No. R-0683)

Discussion Agenda

2. Proposed amendments to Regulations H (Membership of State Banking Institutions in the Federal Reserve System) and Y (Bank Holding Companies and Change in Bank Control) to implement the Financial Institutions Reform, Recovery and Enforcement Act of 1989 regarding real estate

appraisal standards. (Proposed earlier for public comment: Docket No. R-0685)

3. (a) Requests by Norwest Corporation, Minneapolis, Minnesota, and NCNB Corporation, Charlotte, North Carolina, for limited exemptions from the anti-tying restrictions in section 106 of the Bank Holding Company Act Amendments of 1970, and (b) proposed rulemaking providing exemptions from anti-tying restrictions.

4. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for \$5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: June 13, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-14004 Filed 6-13-90; 10:00 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:00 a.m., Wednesday, June 20, 1990, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 13, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-14005 Filed 6-13-90; 10:00 am]

BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 9:30 a.m., Wednesday, June 20, 1990.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Central Liquidity Facility Report and Review of CLF Lending Rate.
3. Insurance Fund Report.
4. NCUA Long Range Plan.

RECESS: 10:15 a.m.

TIME AND DATE: 10:30 a.m., Wednesday, June 20, 1990.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.
2. Administrative Actions under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (7), (8), (9)(A)(ii), and (9)(B).
3. Appeals by FCUs regarding Denials of FOM Expansion Requests. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
4. Administrative Action under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
5. NCUA Delegations of Authority. Closed pursuant to exemption (2).
6. Administrative Action under Section 105 of the Federal Credit Union Act. Closed pursuant to exemptions (9)(A)(ii) and (9)(B).
7. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 90-14029 Filed 6-13-90; 12:24 pm]

BILLING CODE 7535-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, June 12, 1990, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to the

resolution of certain failed thrift institutions.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), concurred in by Chairman L. William Seidman and Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of

the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the

Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: June 12, 1990.
Resolution Trust Corporation.
John M. Buckley, Jr.,
Executive Secretary.
[FR Doc. 90-14056 Filed 6-13-90; 1:55 pm]
BILLING CODE 6714-01-

Corrections

Federal Register

Vol. 55, No. 116

Friday, June 15, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP90-1355-000, et al.]

Northwest Pipeline Corp. et al.; Natural Gas Certificate Filings

Correction

In notice document 90-13130 beginning on page 23273 in the issue of Thursday, June 7, 1990, make the following correction:

On page 23278, in the second column, under 17. Southern Natural Gas Co., the

docket number should read "CP90-1420-000".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP87-62-004]

Pacific Gas Transmission Co.; Compliance Filing

Correction

In notice document 90-13134 beginning on page 23281 in the issue of Thursday, June 7, 1990, the docket number should read as it appears in the heading above.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

Office of Administration

40 CFR Part 35

[FRL-3727-1]

RIN 2010-AA11

Cooperative Agreements and Superfund State Contracts for Superfund Response Actions

Correction

In rule document 90-12715 beginning on page 22994 in the issue of Tuesday, June 5, 1990, make the following corrections:

1. In the heading, the CFR part should appear as set forth above.

§ 35.6285 [Corrected]

2. On page 23016, in the third column, in § 35.6285 (c)(1)(ii), in the third line, "October 7, 1986." should read "October 17, 1986."

BILLING CODE 1505-01-D

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Friday
June 15, 1990

Real Estate Transfer

Part II

Department of Housing and Urban Development

Redelegation of Authority; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. D-90-921; FR-2839 D-01]

Redelegation of Authority

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: On May 13, 1971 (36 FR 8821), the Secretary of HUD delegated to the Assistant Secretary for Fair Housing and Equal Opportunity the authority to act as the "responsible Department official" in all matters relating to the carrying out of the requirements of title VI of the Civil Rights Act of 1964 as such authority is set forth in HUD's regulations and procedures promulgated thereunder and published in 24 CFR parts 1 and 2. The Assistant Secretary for Fair Housing and Equal Opportunity is now redelegating the authority to act as "responsible Department official," in certain specific circumstances, to the Regional Directors of Fair Housing and Equal Opportunity and to the Deputy Assistant Secretary for Enforcement and Compliance. This notice states the scope and authority redelegated to the Regional Directors and the Deputy Assistant Secretary for Enforcement and Compliance.

EFFECTIVE DATE: June 1, 1990.

FOR FURTHER INFORMATION CONTACT: Peter Kaplan, Director, HUD Program Compliance, Office of Fair Housing and Equal Opportunity, Room 5230, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 708-2904 (voice) or (202) 708-0113 (TDD). (These are not toll-free numbers.)

Section A: Authority Redelegated

The Assistant Secretary for Fair Housing and Equal Opportunity redelegates the authority to act as the "responsible Department Official" as set forth in 24 CFR part 1, to the Regional Directors of Fair Housing and Equal Opportunity in the following specific circumstances:

1. To receive compliance reports submitted by recipients under 24 CFR 1.6(b).
2. To obtain access to sources of information from recipients under 24 CFR 1.6(b).
3. To conduct periodic compliance reviews of recipients under 24 CFR 1.7(a).

4. To conduct complaint investigations of recipients under 24 CFR 1.7(c).

5. To recommend findings of noncompliance to the Assistant Secretary for Fair Housing and Equal Opportunity and to notify recipients of determinations by the Assistant Secretary for Fair Housing and Equal Opportunity that there is a failure to comply with part 1 under 24 CFR 1.7(d)(1).

Section B: Authority Redelegated

The Assistant Secretary for Fair Housing and Equal Opportunity redelegates the authority to act as "responsible Department Official" as set forth in 24 CFR part 1 to the Regional Directors of Fair Housing and Equal Opportunity in Region 1, 2, 4, 5, 8, 9 and 10 in the following specific circumstance:

1. Where there is a finding of compliance on all issues, to determine, under 24 CFR 1.7(d)(2), that an investigation does not warrant action and to issue the recipient a formal written determination of compliance.

Section C: Authority Redelegated

The Assistant Secretary for Fair Housing and Equal Opportunity redelegates the authority to act as the "responsible Department official" as set forth in 24 CFR part 1, to the Deputy Assistant Secretary for Enforcement and Compliance, in the following specific circumstances:

1. To receive compliance reports submitted by recipients under 24 CFR 1.6(b).
2. To request documents from recipients under 24 CFR 1.6(c).
3. To conduct periodic compliance reviews of recipients under 24 CFR 1.7(b).
4. To conduct complaint investigations of recipients under 24 CFR 1.7(c).
5. To recommend findings of noncompliance to the Assistant Secretary for Fair Housing and Equal Opportunity and to notify recipient of determinations by the Assistant Secretary for Fair Housing and Equal Opportunity that there is a failure to comply with part 1 under 24 CFR 1.7(d)(1).
6. Where there is a finding of compliance on all issues, to determine, under 24 CFR 1.7(d)(2), that an investigation does not warrant action and to issue the recipient a formal written determination of compliance.

Section D: Authority Excepted

There is excepted from the authorities redelegated under sections A and B, the authority to redelegate.

Authority: 42 U.S.C. 2000d; Department of HUD Act, 42 U.S.C. 3535(d).

Dated: June 1, 1990.

Gordon Mansfield,
Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 90-13873 Filed 6-14-90; 8:45 am]

BILLING CODE 4210-28-M

[Docket No. D-90-922; FR-2840-D-01]

Redelegation of Authority

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: On May 13, 1971 (36 FR 8821), the Secretary of HUD delegated to the Assistant Secretary for Fair Housing and Equal Opportunity the authority to act as the "responsible Department official" in all matters relating to the carrying out of the requirements of title VI of the Civil Rights Act of 1964 as such authority is set forth in HUD's regulations and procedures promulgated thereunder and published in 24 CFR parts 1 and 2. On June 1, 1990 the Assistant Secretary for Fair Housing and Equal Opportunity redelegated the authority to act as "responsible Department official" in certain specific circumstances to the Deputy Assistant Secretary for Enforcement and Compliance.

EFFECTIVE DATE: June 1, 1990.

FOR FURTHER INFORMATION CONTACT: Peter Kaplan, Director, HUD Program Compliance, Office of Fair Housing and Equal Opportunity, Room 5230, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 708-2904 (voice) or (202) 708-0113. (These are not toll-free numbers.)

Section A: Authority Redelegated

The Deputy Assistant Secretary for Enforcement and Compliance now redelegates the authority to act as the "responsible Department official" as set forth in 24 CFR part 1 to the Director, Office of HUD Program Compliance in the following specific circumstances:

1. To receive compliance reports submitted by recipients under 24 CFR 1.6(b).
2. To request documents from recipients under 24 CFR 1.6(c).
3. To conduct periodic compliance reviews of recipients under 24 CFR 1.7(b).

4. To conduct complaint investigations of recipients under 24 CFR 1.7(c).

5. To recommend findings of noncompliance to the Assistant Secretary for Fair Housing and Equal Opportunity and to notify recipients of determinations by the Assistant Secretary for Fair Housing and Equal Opportunity that there is a failure to comply with part 1 under 24 CFR 1.7(d)(1).

6. Where there is a finding of compliance on all issues, to determine, under 24 CFR 1.7(d)(2), that an investigation does not warrant action and to issue the recipient a formal written determination of compliance.

Section B: Authority Excepted

There is expected from the authorities redelegated under Section A, the authority to redelegate.

Dated: June 1, 1990.

Leonora L. Guarraia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 90-13874 Filed 6-14-90; 8:45 am]

BILLING CODE 4210-28-M

1. The first of the three main sections of the report is a general survey of the situation in the country. It is a very interesting and informative survey, and it is well worth reading. It gives a very good idea of the general situation in the country, and it is well worth reading. It gives a very good idea of the general situation in the country, and it is well worth reading.

2. The second of the three main sections of the report is a detailed survey of the situation in the country. It is a very interesting and informative survey, and it is well worth reading. It gives a very good idea of the general situation in the country, and it is well worth reading.

3. The third of the three main sections of the report is a detailed survey of the situation in the country. It is a very interesting and informative survey, and it is well worth reading. It gives a very good idea of the general situation in the country, and it is well worth reading.

4. The fourth of the three main sections of the report is a detailed survey of the situation in the country. It is a very interesting and informative survey, and it is well worth reading. It gives a very good idea of the general situation in the country, and it is well worth reading.

5. The fifth of the three main sections of the report is a detailed survey of the situation in the country. It is a very interesting and informative survey, and it is well worth reading. It gives a very good idea of the general situation in the country, and it is well worth reading.

6. The sixth of the three main sections of the report is a detailed survey of the situation in the country. It is a very interesting and informative survey, and it is well worth reading. It gives a very good idea of the general situation in the country, and it is well worth reading.

7. The seventh of the three main sections of the report is a detailed survey of the situation in the country. It is a very interesting and informative survey, and it is well worth reading. It gives a very good idea of the general situation in the country, and it is well worth reading.

8. The eighth of the three main sections of the report is a detailed survey of the situation in the country. It is a very interesting and informative survey, and it is well worth reading. It gives a very good idea of the general situation in the country, and it is well worth reading.

9. The ninth of the three main sections of the report is a detailed survey of the situation in the country. It is a very interesting and informative survey, and it is well worth reading. It gives a very good idea of the general situation in the country, and it is well worth reading.

10. The tenth of the three main sections of the report is a detailed survey of the situation in the country. It is a very interesting and informative survey, and it is well worth reading. It gives a very good idea of the general situation in the country, and it is well worth reading.

Federal Register

Friday
June 15, 1990

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 172 and 173

Requirements for Explosives; Correction to Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs
Administration

49 CFR Parts 172 and 173

[Docket No. HM-181A; Notice No. 90-5]

RIN 2137-AA01

Requirements for Explosives:
Correction

AGENCY: Research and Special Programs Administration (RSPA), U.S. Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM); Correction.

SUMMARY: This document amends the NPRM regarding requirements for explosives published on May 2, 1990 (Docket No. HM-181A; Notice No. 90-5; 55 FR 18438), by correcting several non-substantive errors and omissions. These corrections should provide a better understanding of the proposals contained in Notice No. 90-5.

DATES: Comments must be received on or before July 16, 1990.

ADDRESSES: Address comments to the Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should identify the docket and be submitted, if possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard showing the docket number (i.e., Docket HM-181A). The Dockets Unit is located in Room 8419 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-5046. The public dockets may be reviewed between the hours of 8:30 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles H. Ke (202-366-4545) or Delmer F. Billings (202-366-4488), Office of Hazardous Materials Transportation, RSPA, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: May 2, 1990, RSPA published a NPRM under Docket No. HM-181A, proposing to amend the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) with regard to hazard classification, packaging, and hazard communication requirements applicable to explosives. That NPRM contained several inadvertent mistakes which are being corrected by this document. In addition, we are correcting Notice No. 90-5 by including certain provisions which were inadvertently omitted.

Notice No. 90-5 supplemented the rulemaking initiated under Docket No. HM-181, entitled "Performance-Oriented Packaging Standards" (Notice No. 87-4; 52 FR 16482 and 52 FR 42772, published May 5, 1987 and November 6, 1987, respectively), by addressing the requirements of the HMR applicable to explosives. The proposals contained in Notice Nos. 87-4 and 90-5 are based on the United Nations Recommendations on the Transport of Dangerous Goods.

As noted above, Notice No. 90-5 was published with several non-substantive errors and omissions. Some sections were published with typographical errors and other sections were published with misplaced or missing text. The Hazardous Materials Table (HMT; 49 CFR 172.101) was published with several typographical errors, incomplete column entries, and, because of a data processing error, with incorrect data in Column 10, "Vessel Stowage Provisions." The Class 1 (explosive) entries in the HMT are republished in their entirety in this document.

In Column 10, RSPA is proposing to amend vessel stowage requirements to conform with the 1990 Consolidated Edition (Amendment 25) of the International Maritime Dangerous Goods Code (IMDG Code). Columns 10A and 10B of the HMT, as proposed in Notice No. 87-4, would be consolidated into a single stowage column (10A). Stowage descriptions in the consolidated Column 10A would be organized under stowage categories "A" through "E." These categories are defined in § 172.101(k), which is revised in this document.

Column 10C of the HMT ("Other stowage provisions"), as proposed in Notice No. 87-4, has been relabeled Column 10B. Except for those codes defined below, the definition of the codes in Column 10B are set forth in proposed § 176.84 of Docket No. HM-204 (May 21, 1990; Notice No. 90-6; 55 FR 20962). The codes 24E through 28E would be defined as follows:

Note and Provision

- 24E Passenger vessels, on deck or under deck, in portable magazines only.
- 25E Passenger vessels, in containers or the like, on deck only.
- 26E Cargo vessel, on deck, in containers or the like (non-metallic lining is necessary if not in sealed dust tight packages).
- 27E Cargo vessel, on deck, in containers or the like (non-metallic lining necessary).
- 28E Cargo vessel, when items are transported as projectiles or cartridges for guns, cannons, or

mortars, notes 1E and 7E are applicable. All other times, notes 14E, 15E and 8E are applicable.

Though no corresponding column designations have been published for proper shipping names for other than Class 1 (explosive), RSPA will incorporate these new codes and column designations into the rest of the HMT under any final rule published under Docket No. HM-181. As RSPA stated in Notice No. 87-4:

* * * the proposed Column 10 has been redone to conform with the IMDG Code (including Amendment 22, effective July 1, 1986) thereby filling the gap for international shipments. The net result should be international uniformity and fewer problems with improperly stowed cargo. Any amendments subsequently adopted in the IMDG Code which affect Column 10 are planned to be incorporated into the final rule.

In consideration of the foregoing, in Docket No. HM-181A, Notice No. 90-5, published in the Federal Register on May 2, 1990 (55 FR 18438), make the following corrections:

1. On page 18442, third column, add item 5a to read:

5a. In § 172.101, paragraph (k), as proposed at 52 FR 42788 on November 6, 1987, is revised to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

(k) *Column 10: Vessel stowage requirements.* Column 10A [Vessel stowage] specifies the authorized stowage locations on board cargo and passenger vessels. Column 10B [Other provisions] specifies codes for stowage requirements for specific hazardous materials. The meaning of each code in column 10B is set forth in § 176.84 of this subchapter. Section 176.83 of this subchapter sets forth the physical requirements for each of the authorized locations listed in column 10A. (For bulk transportation by vessel, see 48 CFR parts 30 to 40, 70, 98, 148, 151, 153 and 154). The authorized stowage locations specified in Column 10A are defined as follows:

- (1) Stowage category "A" means the material may be stored "on deck" or "under deck" on a cargo vessel and a passenger vessel.
- (2) Stowage category "B" means the material may be stored "on deck" or "under deck" on a cargo vessel, but must be stowed "on deck" on a passenger vessel.
- (3) Stowage category "C" means the material must be stored "on deck" on a cargo vessel and on a passenger vessel.
- (4) Stowage category "D" means the material must be stowed "on deck" on a

cargo vessel, but is prohibited on a passenger vessel.

(5) Stowage category "E" means the material may be stowed "on deck" or "under deck" on a cargo vessel, but is prohibited on a passenger vessel.

* * * * *

1a. On page 18442, in the third column, revise item 6 to read as follows:

"6. In § 172.101, as proposed at 52 FR 42783 on November 6, 1987, the following entries for explosives are either revised or added in appropriate alphabetical order to the Hazardous Materials Table beginning at 52 FR

42787, and columns 10A, 10B, and 10C are consolidated into new columns 10A and 10B for the following entries for explosives:"

2. Replace the table which appears on pages 18443 to 18458 with the following:

§ 172.101 [Corrected]

Sym- bols	Hazardous materials descriptions and proper shipping names	Hazard class	Identifica- tion Numbers	Pack- ing group	Labels	Special provisions	(8) Packaging authorizations (\$173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Excep- tions	Non- bulk pack- aging	Bulk packag- ing	Passenger aircraft or railcar	Cargo aircraft only	Vessel Stow- age	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Ammonium nitrate fertilizer: which is more liable to explode than ammonium nitrate with 0.2 per cent combustible substances, including any organic substance calculated as carbon, to the exclusion of any other added substance.	1.1D	UN0223	II	EXPLOSIVE 1.1D.	.....		62	None	Forbidden ...	Forbidden ...	B	1E, 5E, 19E
D	Ammonium nitrate-fuel oil mixture (containing only prilled ammonium nitrate and fuel oil).	1.5D	NA0331	II	EXPLOSIVE 1.5D.	.....		62	None	Forbidden ...	Forbidden ...	B	1E, 5E, 19E
	Ammonium nitrate, with more than 0.2 per cent combustible substances, including any organic substance calculated as carbon, to the exclusion of any other added sub- stance.	1.1D	UN0222	II	EXPLOSIVE 1.1D.	.....		62	None	Forbidden ...	Forbidden ...	B	1E, 5E, 19E
	Ammonium perchlorate	1.1D	UN0402	II	EXPLOSIVE 1.1D.	107		62	None	Forbidden ...	Forbidden ...	B	1E, 5E, 19E
	Ammonium picrate, dry or wetted with less than 10 per cent water, by mass.	1.1D	UN0004	II	EXPLOSIVE 1.1D.	.....		62	None	Forbidden ...	Forbidden ...	B	1E, 5E, 19E
	Ammunition, illuminating with or without burst- er, expelling charge or propelling charge.	1.2G	UN0171	II	EXPLOSIVE 1.2G.	.....	63(b)	62	None	Forbidden ...	Forbidden ...	B	
	Ammunition, illuminating with or without burst- er, expelling charge or propelling charge.	1.3G	UN0254	II	EXPLOSIVE 1.3G.	.....	63(b)	62	None	Forbidden ...	Forbidden ...	B	
	Ammunition, illuminating with or without burst- er, expelling charge or propelling charge.	1.4G	UN0297	II	EXPLOSIVE 1.4G.	.....	63(b)	62	None	Forbidden ...	75kg	A	24E
	Ammunition, incendiary liquid or gel, with burst-er, expelling charge or propelling charge.	1.3J	UN0247	II	EXPLOSIVE 1.3J.	.....	63(b)	62	None	Forbidden ...	Forbidden ...	E	7E, 13E, 23E
	Ammunition, incendiary, white phosphorus, with burst-er, expelling charge or propelling charge.	1.2H	UN0243	II	EXPLOSIVE 1.2H.	.....	63(b)	62	None	Forbidden ...	Forbidden ...	E	8E, 14E, 15E
	Ammunition, incendiary, white phosphorus, with burst-er, expelling charge or propelling charge.	1.3H	UN0244	II	EXPLOSIVE 1.3H.	.....	63(b)	62	None	Forbidden ...	Forbidden ...	E	8E, 14E, 15E
	Ammunition, incendiary with or without burst- er, expelling charge, or propelling charge.	1.2G	UN0009	II	EXPLOSIVE 1.2G.	.....	63(b)	62	None	Forbidden ...	Forbidden ...	B	
	Ammunition, incendiary with or without burst- er, expelling charge, or propelling charge.	1.3G	UN0010	II	EXPLOSIVE 1.3G.	.....	63(b)	62	None	Forbidden ...	Forbidden ...	B	
	Ammunition, incendiary with or without burst- er, expelling charge or propelling charge.	1.4G	UN0300	II	EXPLOSIVE 1.4G.	.....	63(b)	62	None	Forbidden ...	75kg	A	24E
	Ammunition, practice	1.4G	UN0362	II	EXPLOSIVE 1.4G.	.....	63(b)	62	None	Forbidden ...	75kg	A	24E
	Ammunition, practice	1.3G	UN0488	II	EXPLOSIVE 1.3G.	.....	63(b)	62	None	Forbidden ...	Forbidden ...	B	1E, 7E, 25E
	Ammunition, proof	1.4G	UN0363	II	EXPLOSIVE 1.4G.	.....	63(b)	62	None	Forbidden ...	75kg	A	24E
	Ammunition, smoke, white phosphorus with burst-er, expelling charge, or propelling charge.	1.3H	UN0246	II	EXPLOSIVE 1.3H.	.....	63(b)	62	None	Forbidden ...	Forbidden ...	E	8E, 14E, 15E, 17E

Sym- bols	Hazardous materials descriptions and proper shipping names	Hazard class	Identifi- cation Numbers	Pack- ing group	Labels	Special provisions	(8) Packaging authorizations (§ 173.33)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Excep- tions	Non- bulk packag- ing	Bulk packag- ing	Passenger aircraft or railcar	Cargo aircraft only	Vessel Stow- age	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Ammunition smoke, white phosphorus with bursting,expelling charge, or propelling charge.	1.2H	UN0245	II	EXPLOSIVE 1.2H.		63(b)	62	None	Forbidden	Forbidden	E	8E, 14E, 15E, 17E
	Ammunition, smoke with or without bursting, expelling charge or propelling charge.	1.3G	UN0016	II	EXPLOSIVE 1.3G.		63(b)	62	None	Forbidden	Forbidden	E	20E
	Ammunition, smoke with or without bursting, expelling charge or propelling charge.	1.4G	UN0303	II	EXPLOSIVE 1.4G.		63(b)	62	None	Forbidden	75kg	E	20E
	Ammunition, smoke with or without bursting, expelling charge or propelling charge.	1.2G	UN0015	II	EXPLOSIVE 1.2G.		63(b)	62	None	Forbidden	Forbidden	E	20E
	Ammunition, tear-producing with bursting, ex- pelling charge or propelling charge.	1.2G	UN0018	II	EXPLOSIVE 1.2G.		63(b)	62	None	Forbidden	Forbidden	E	20E
	Ammunition, tear-producing with bursting, ex- pelling charge or propelling charge.	1.3G	UN0019	II	EXPLOSIVE 1.3G.		63(b)	62	None	Forbidden	Forbidden	E	20E
	Ammunition, tear-producing with bursting, ex- pelling charge or propelling charge.	1.4G	UN0301	II	EXPLOSIVE 1.4G.		63(b)	62	None	Forbidden	75kg	E	20E
	Ammunition, toxic with bursting, expelling charge, or propelling charge.	1.2K	UN0020	II	EXPLOSIVE 1.2K.		63(b)	62	None	Forbidden	Forbidden	E	2E, 8E, 14E, 17E
	Ammunition, toxic with bursting, expelling charge, or propelling charge.	1.3K	UN0021	II	EXPLOSIVE 1.3K.		63(b)	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
	Articles, explosive, extremely insensitive; (Ar- ticles, EEI).	1.6N	UN0486	II	EXPLOSIVE 1.6N.	101		62	None	Forbidden	Forbidden	B	
	Articles, explosive, n.o.s.	1.4S	UN0349	II	EXPLOSIVE 1.4S.	101		62	None	25kg	100kg	A	9E
	Articles, explosive, n.o.s.	1.4B	UN0350	II	EXPLOSIVE 1.4B.	101		62	None	Forbidden	Forbidden	A	24E
	Articles, explosive, n.o.s.	1.4C	UN0351	II	EXPLOSIVE 1.4C.	101		62	None	Forbidden	Forbidden	A	24E
	Articles, explosive, n.o.s.	1.4D	UN0352	II	EXPLOSIVE 1.4D.	101		62	None	Forbidden	Forbidden	A	24E
	Articles, explosive, n.o.s.	1.4G	UN0353	II	EXPLOSIVE 1.4G.	101		62	None	Forbidden	Forbidden	A	24E
	Articles, explosive, n.o.s.	1.1L	UN0354	II	EXPLOSIVE 1.1L.	101		62	None	Forbidden	Forbidden	A	24E
	Articles, explosive, n.o.s.	1.2L	UN0355	II	EXPLOSIVE 1.2L.	101		62	None	Forbidden	Forbidden	E	2E, 8E, 17E
	Articles, explosive, n.o.s.	1.3L	UN0356	II	EXPLOSIVE 1.3L.	101		62	None	Forbidden	Forbidden	E	2E, 8E, 17E
	Articles, explosive, n.o.s.	1.1C	UN0462	II	EXPLOSIVE 1.1C.	101		62	None	Forbidden	Forbidden	E	2E, 8E, 17E
	Articles, explosive, n.o.s.	1.1D	UN0463	II	EXPLOSIVE 1.1D.	101		62	None	Forbidden	Forbidden	E	2E, 8E, 17E
	Articles, explosive, n.o.s.	1.1E	UN0464	II	EXPLOSIVE 1.1E.	101		62	None	Forbidden	Forbidden	B	
	Articles, explosive, n.o.s.	1.1F	UN0465	II	EXPLOSIVE 1.1F.	101		62	None	Forbidden	Forbidden	B	
	Articles, explosive, n.o.s.	1.2C	UN0466	II	EXPLOSIVE 1.2C.	101		62	None	Forbidden	Forbidden	E	
	Articles, explosive, n.o.s.	1.2D	UN0467	II	EXPLOSIVE 1.2D.	101		62	None	Forbidden	Forbidden	B	

(1) Sym- bols	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(4) Identifica- tion Numbers	(5) Pack- ing group	(6) Labels	(7) Special provisions	(8) Packaging authorizations (§ 173.161)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Excep- tions	Non- bulk packag- ing	Bulk packag- ing	Passenger aircraft or raider	Cargo aircraft only	Vessel Stow- age	Other stowage provisions
D	Articles, explosive, n.o.s.	1.2E	UN0468	II	EXPLOSIVE 1.2E	101		62	None	Forbidden	Forbidden	B	
	Articles, explosive, n.o.s.	1.2F	UN0469	II	EXPLOSIVE 1.2F	101		62	None	Forbidden	Forbidden	E	
	Articles, explosive, n.o.s.	1.3C	UN0470	II	EXPLOSIVE 1.3C	101		62	None	Forbidden	Forbidden	B	
	Articles, explosive, n.o.s.	1.4E	UN0471	II	EXPLOSIVE 1.4E	101		62	None	Forbidden	75kg	A	24E
	Articles, explosive, n.o.s.	1.4F	UN0472	II	EXPLOSIVE 1.4F	101		62	None	Forbidden	Forbidden	E	
	Articles, pyrophoric	1.2L	UN0380	II	EXPLOSIVE 1.2L			62	None	Forbidden	Forbidden	E	2E, 8E, 17E
	Articles, pyrotechnic for technical purposes	1.1G	UN0428	II	EXPLOSIVE 1.1G			62	None	Forbidden	Forbidden	B	
	Articles, pyrotechnic for technical purposes	1.2G	UN0429	II	EXPLOSIVE 1.2G			62	None	Forbidden	Forbidden	B	
	Articles, pyrotechnic for technical purposes	1.3G	UN0430	II	EXPLOSIVE 1.3G			62	None	Forbidden	Forbidden	B	
	Articles, pyrotechnic for technical purposes	1.4G	UN0431	II	EXPLOSIVE 1.4G			62	None	Forbidden	75kg	A	24E
	Articles, pyrotechnic for technical purposes	1.4S	UN0432	II	EXPLOSIVE 1.4S			62	None	25kg	100kg	A	9E
	Barium azide, dry or wetted with less than 50 per cent water, by mass.	1.1A	UN0224	II	EXPLOSIVE 1.1A, Poison.	111		62	None	Forbidden	Forbidden	E	2E, 6E
	Barium styphnate	1.1A	NA0473	II	EXPLOSIVE 1.1A	111		62	None	Forbidden	Forbidden	E	2E, 6E
D	Black powder (Gunpowder), compressed or Black powder (Gunpowder), in pellets. Black powder (Gunpowder), granular or as a meal.	1.1D	UN0028	II	EXPLOSIVE 1.1D			62	None	Forbidden	Forbidden	B	1E, 5E
	Blasting agent, n.o.s.	1.1D	UN0027	II	EXPLOSIVE 1.1D			62	None	Forbidden	Forbidden	B	10E, 26E
	Bombs, photo-flash	1.5D	NA0331	II	EXPLOSIVE 1.5D			62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Bombs, photo-flash	1.1F	UN0037	II	EXPLOSIVE 1.1F		63(b)	62	None	Forbidden	Forbidden	E	
	Bombs, photo-flash	1.1D	UN0038	II	EXPLOSIVE 1.1D		63(b)	62	None	Forbidden	Forbidden	B	
	Bombs, photo-flash	1.2G	UN0039	II	EXPLOSIVE 1.2G		63(b)	62	None	Forbidden	Forbidden	B	
	Bombs, photo-flash	1.3G	UN0299	II	EXPLOSIVE 1.3G		63(b)	62	None	Forbidden	Forbidden	B	
	Bombs, with bursting charge	1.1F	UN0033	II	EXPLOSIVE 1.1F		63(b)	62	None	Forbidden	Forbidden	E	
	Bombs, with bursting charge	1.1D	UN0034	II	EXPLOSIVE 1.1D		63(b)	62	None	Forbidden	Forbidden	B	3E, 7E
	Bombs, with bursting charge	1.2D	UN0035	II	EXPLOSIVE 1.2D		63(b)	62	None	Forbidden	Forbidden	B	3E, 7E
	Bombs, with bursting charge	1.2F	UN0291	II	EXPLOSIVE 1.2F		63(b)	62	None	Forbidden	Forbidden	E	
	Bombs with flammable liquid, with bursting charge.	1.1J	UN0399	II	EXPLOSIVE 1.1J		63(b)	62	None	Forbidden	Forbidden	E	7E, 16E, 23E

Sym- bols	Hazardous materials descriptions and proper shipping names	Hazard class	Identifi- cation Numbers	Pack- ing group	Labels	Special provisions	(6) Packaging authorizations (§ 173.24)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Excep- tions	Non- bulk pack- aging	Bulk packag- ing	Passenger aircraft or raider	Cargo aircraft only	Vessel Stow- age	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Bombs' with flammable liquid, with bursting charge.	1.2J	UN0400	II	EXPLOSIVE 1.2J.		63(b)	62	None	Forbidden ...	Forbidden ...	E	7E, 16E, 23E
	Boosters, without detonator	1.1D	UN0042	II	EXPLOSIVE 1.1D.			62	None	Forbidden ...	Forbidden ...	B	
	Boosters, without detonator	1.2D	UN0283	II	EXPLOSIVE 1.2D.			62	None	Forbidden ...	Forbidden ...	B	
	Bursting, explosive	1.1D	UN0043	II	EXPLOSIVE 1.1D.			62	None	Forbidden ...	Forbidden ...	B	
	Cartridges, flash	1.1G	UN0049	II	EXPLOSIVE 1.1G.			62	None	Forbidden ...	Forbidden ...	B	
	Cartridges, flash	1.3G	UN0050	II	EXPLOSIVE 1.3G.			62	None	Forbidden ...	75kg	B	
	Cartridges for weapons, blank	1.1C	UN0326	II	EXPLOSIVE 1.1C.			62	None	Forbidden ...	Forbidden ...	B	
	Cartridges for weapons, blank	1.2C	UN0413	II	EXPLOSIVE 1.2C.			62	None	Forbidden ...	Forbidden ...	B	
	Cartridges for weapons, blank; (Cartridges, small arms, blank).	1.3C	UN0327	II	EXPLOSIVE 1.3C.			62	None	Forbidden ...	Forbidden ...	B	
	Cartridges for weapons, blank; (Cartridges, small arms, blank).	1.4C	UN0338	II	EXPLOSIVE 1.4C.			62	None	Forbidden ...	75kg	A	24E
	Cartridges for weapons, blank; (Cartridges, small arms, blank).	1.4S	UN0014	II	EXPLOSIVE 1.4S.			62	None	25kg	100kg	A	9E
	Cartridges for weapons, inert projectile (car- tridges, small arms).	1.2C	UN0328	II	EXPLOSIVE 1.2C.			62	None	Forbidden ...	Forbidden ...	B	
	Cartridges for weapons; inert projectile (car- tridges, small arms), other than blank.	1.4S	UN0012	II	EXPLOSIVE 1.4S.			62	None	25kg	100kg	A	9E
	Cartridges for weapons, inert projectile (car- tridges, small arms).	1.4C	UN0339	II	EXPLOSIVE 1.4C.			62	None	Forbidden ...	75kg	B	
	Cartridges for weapons, inert projectile (car- tridges, small arms).	1.3C	UN0417	II	EXPLOSIVE 1.3C.			62	None	Forbidden ...	Forbidden ...	B	
	Cartridges for weapons, with bursting charge	1.1F	UN0005	II	EXPLOSIVE 1.1F.			62	None	Forbidden ...	Forbidden ...	E	
	Cartridges for weapons, with bursting charge	1.2F	UN0007	II	EXPLOSIVE 1.2F.			62	None	Forbidden ...	Forbidden ...	E	
	Cartridges for weapons, with bursting charge	1.4F	UN0348	II	EXPLOSIVE 1.4F.			62	None	Forbidden ...	Forbidden ...	E	
	Cartridges for weapons, with bursting charge	1.4E	UN0412	II	EXPLOSIVE 1.4E.			62	None	Forbidden ...	75kg	A	24E
	Cartridges for weapons, with bursting charge	1.1E	UN0006	II	EXPLOSIVE 1.1E.			62	None	Forbidden ...	Forbidden ...	B	
	Cartridges for weapons, with bursting charge	1.2E	UN0321	II	EXPLOSIVE 1.2E.			62	None	Forbidden ...	Forbidden ...	B	
	Cartridges, oil well	1.3C	UN0277	II	EXPLOSIVE 1.3C.			62	None	Forbidden ...	Forbidden ...	B	
	Cartridges, oil well	1.4C	UN0278	II	EXPLOSIVE 1.4C.			62	None	Forbidden ...	75kg	A	24E
	Cartridges, power device	1.3C	UN0275	II	EXPLOSIVE 1.3C.	110	63(e)	62	None	Forbidden ...	75kg	B	
	Cartridges, power device	1.4C	UN0276	II	EXPLOSIVE 1.4C.	110		62	None	Forbidden ...	75kg	A	24E

Sym- bols	Hazardous materials descriptions and proper shipping names	Hazard class	Identifi- cation Numbers	Pack- ing group	Labels	Special provisions	(8) Packaging authorizations (§ 173.16)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Excep- tions	Non- bulk pack- aging	Bulk packag- ing	Passenger aircraft or railcar	Cargo aircraft only	Vessel Stow- age	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Cartridges, power device	1.2C	UN0381	II	EXPLOSIVE 1.2C.		63(e)	62	None	Forbidden	Forbidden	B	
	Cartridges, power device	1.4S	UN0323	II	EXPLOSIVE 1.4S.	110		62	None	25kg	100kg	A	9E
	Cartridges, signal	1.3G	UN0054	II	EXPLOSIVE 1.3G.			62	None	Forbidden	75kg	B	
	Cartridges, signal	1.4G	UN0312	II	EXPLOSIVE 1.4G.			62	None	Forbidden	75kg	A	24E
	Cartridges, signal	1.4S	UN0405	II	EXPLOSIVE 1.4S.			62	None	25kg	100kg	A	9E
D	Cartridges, small arms	ORM-D	None	III	None	112	63(f)	None	None	65lbs gross..	65lbs gross..	A	
	Cases, cartridge, empty with primer	1.4S	UN0055	II	EXPLOSIVE 1.4S.			62	None	25kg	100kg	A	9E
	Cases, cartridges, empty with primer	1.4C	UN0379	II	EXPLOSIVE 1.4C.			62	None	Forbidden	75kg	A	24E
	Cases, combustible, empty, without primer	1.3C	UN0447	II	EXPLOSIVE 1.3C.			62	None	Forbidden	Forbidden	B	
	Cases, combustible, empty, without primer	1.4C	UN0446	II	EXPLOSIVE 1.4C.			62	None	Forbidden	75kg	A	24E
	Charges, bursting, plastics bonded	1.1D	UN0457	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	
	Charges, bursting, plastics bonded	1.2D	UN0458	II	EXPLOSIVE 1.2D.			62	None	Forbidden	Forbidden	B	
	Charges, bursting, plastics bonded	1.4D	UN0459	II	EXPLOSIVE 1.4D.			62	None	Forbidden	75kg	A	24E
	Charges, bursting, plastics bonded	1.4S	UN0460	II	Explosive 1.4S			62	None	25kg	100kg	A	9E
	Charges, demolition	1.1D	UN0048	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	
	Charges, depth	1.1D	UN0056	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	3E, 7E
	Charges, explosive, commercial without deto- nator	1.1D	UN0442	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	
	Charges, explosive, commercial without deto- nator	1.2D	UN0443	II	EXPLOSIVE 1.2D.			62	None	Forbidden	Forbidden	B	
	Charges, explosive, commercial without deto- nator	1.4D	UN0444	II	EXPLOSIVE 1.4D.			62	None	Forbidden	75kg	A	24E
	Charges, explosive, commercial without deto- nator	1.4S	UN0445	II	EXPLOSIVE 1.4S.			62	None	25kg	100kg	A	9E
	Charges, propelling, for cannon	1.2C	UN0414	II	EXPLOSIVE 1.2C.			62	None	Forbidden	Forbidden	B	1E, 5E
	Charges, propelling, for cannon	1.3C	UN0242	II	EXPLOSIVE 1.3C.			62	None	Forbidden	Forbidden	B	1E, 5E
	Charges, propelling, for cannon	1.1C	UN0279	II	EXPLOSIVE 1.1C.			62	None	Forbidden	Forbidden	B	1E, 5E
	Charges, propelling, for rocket motors	1.1C	UN0271	II	EXPLOSIVE 1.1C.			62	None	Forbidden	Forbidden	B	
	Charges, propelling, for rocket motors	1.3C	UN0272	II	EXPLOSIVE 1.3C.			62	None	Forbidden	Forbidden	B	
	Charges, propelling, for rocket motors	1.2C	UN0415	II	EXPLOSIVE 1.2C.			62	None	Forbidden	Forbidden	B	

(1) Sym- bols	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(4) Identifica- tion Numbers	(5) Pack- ing group	(6) Labels	(7) Special provisions	(8) Packaging authorizations (\$173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Excep- tions	Non- bulk pack- aging	Bulk packag- ing	Passenger aircraft or railcar	Cargo aircraft only	Vessel Stow- age	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Charges, propelling, for rocket motors, <i>com- posite mixture</i> .	1.1C	UN0273	II	EXPLOSIVE 1.1C.			62	None	Forbidden	Forbidden	B	
	Charges, propelling, for rocket motors, <i>com- posite mixture</i> .	1.3C	UN0274	II	EXPLOSIVE 1.3C.			62	None	Forbidden	Forbidden	B	
	Charges, propelling, for rocket motors, <i>com- posite mixture</i> .	1.2C	UN0416	II	EXPLOSIVE 1.2C.			62	None	Forbidden	Forbidden	B	
	Charges, shaped, commercial <i>without detona- tor</i> .	1.2D	UN0439	II	EXPLOSIVE 1.2D.			62	None	Forbidden	Forbidden	B	
	Charges, shaped, commercial <i>without detona- tor</i> .	1.4D	UN0440	II	EXPLOSIVE 1.4D.			62	None	Forbidden	75kg	A	24E
	Charges, shaped, commercial <i>without detona- tor</i> .	1.4S	UN0441	II	EXPLOSIVE 1.4S.			62	None	25kg	100kg	A	9E
	Charges, shaped, commercial, <i>without deto- nator</i> .	1.1D	UN0059	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	
	Charges, shaped, flexible, linear	1.4D	UN0237	II	EXPLOSIVE 1.4D.			62	None	Forbidden	75kg	A	24E
	Charges, shaped, flexible, linear	1.1D	UN0288	II	EXPLOSIVE 1.1D.	101		62	None	Forbidden	Forbidden	B	
	Charges, supplementary explosive	1.1D	UN0060	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	1E, 5E
	Components, explosive train, n.o.s.	1.2B	UN0382	II	EXPLOSIVE 1.2B.	101		62	None	Forbidden	Forbidden	B	1E, 6E
	Components, explosive train, n.o.s.	1.4B	UN0383	II	EXPLOSIVE 1.4B.	101		62	None	Forbidden	75kg	A	24E
	Components, explosive train, n.o.s.	1.4S	UN0384	II	EXPLOSIVE 1.4S.	101		62	None	25kg	100kg	A	9E
	Components, explosive train, n.o.s.	1.1B	UN0461	II	EXPLOSIVE 1.1B.	101		62	None	Forbidden	Forbidden	B	1E, 6E
	Contrivances, water-activated, <i>with burster, expelling charge or propelling charge</i> .	1.2L	UN0248	II	EXPLOSIVE 1.2L.	101		62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
	Contrivances, water-activated, <i>with burster, expelling charge or propelling charge</i> .	1.3L	UN0249	II	EXPLOSIVE 1.3L.	101		62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
	Cord, detonating, flexible	1.1D	UN0065	II	EXPLOSIVE 1.1D.	102	63(a)	62	None	Forbidden	Forbidden	B	
	Cord, detonating, flexible	1.4D	UN0289	II	EXPLOSIVE 1.4D.			62	None	Forbidden	75kg	A	24E
	Cord (Fuse), detonating, <i>metal clad</i> .	1.2D	UN0102	II	EXPLOSIVE 1.2D.			62	None	Forbidden	Forbidden	B	
	Cord (Fuse), detonating, <i>metal clad</i> .	1.1D	UN0290	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	
	Cord (Fuse), detonating, mild effect <i>metal clad</i> .	1.4D	UN0104	II	EXPLOSIVE 1.4D.			62	None	Forbidden	75kg	A	24E
	Cord, igniter	1.4G	UN0066	II	EXPLOSIVE 1.4G.			62	None	Forbidden	75kg	A	24E
	Cutters, cable, explosive	1.4S	UN0070	II	EXPLOSIVE 1.4S.			62	None	25kg	100kg	A	9E
	Cyclotetramethylenetetranitramine (HMX; Oc- togen), wetted with not less than 15 per cent water, by mass.	1.1D	UN0226	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	1E, 5E

Sym- bols	Hazardous materials descriptions and proper shipping names	Hazard class	Identifica- tion Numbers	Pack- ing group	Labels	Special provisions	(8) Packaging authorizations (§ 173.44)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Excep- tions	Non- bulk pack- aging	Bulk packag- ing	Passenger aircraft or railcar	Cargo aircraft only	Vessel Stow- age	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Cyclotetramethylenetetranitramine; (Octogen; HMX), desensitized.	1.1D	UN0484	II	EXPLOSIVE 1.1D.					Forbidden	Forbidden	B	1E, 5E
	Cyclotrimethylenetrinitramine (Cyclonite; Hexogen; RDX); and Cyclotetramethylenetetranitramine (HMX; Octogen) mixtures, wetted with not less than 15 per cent water by mass, or Cyclotrimethylenetrinitramine (Cyclonite; Hexogen; RDX) and Cyclotetramethylenetetranitramine (HMX; Octogen) mixtures desensitized with not less than 10 per cent phlegmatizer by mass.	1.1D	UN0391	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	1E, 5E
	Cyclotrimethylenetrinitramine; (Cyclonite; Hexogen; RDX), desensitized.	1.1D	UN0072	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	1E, 5E
	Cyclotrimethylenetrinitramine (Cyclonite; Hexogen; RDX) wetted with not less than 15 per cent water, by mass.	1.3C	UN0132	II	EXPLOSIVE 1.3C.			62	None	Forbidden	Forbidden	B	1E, 5E
	Deflagrating metal salts of aromatic nitroderivatives, n.o.s.	1.1B	UN0360	II	EXPLOSIVE 1.1B.			62	None	Forbidden	Forbidden	B	1E, 2E, 6E
	Detonator assemblies, non-electric for blasting.	1.4B	UN0361	II	EXPLOSIVE 1.4B.			62	None	Forbidden	75kg	A	1E, 2E, 6E, 24E
	Detonator assemblies, non-electric, for blasting.	1.1B	UN0030	II	EXPLOSIVE 1.1B.			62	None	Forbidden	Forbidden	B	
	Detonators, electric, for blasting	1.4B	UN0255	II	EXPLOSIVE 1.4B.			62	None	Forbidden	75kg	A	24E
	Detonators, electric, for blasting	1.4S	UN0456	II	EXPLOSIVE 1.4S.			62	None	25 kg	100 kg	A	9E
	Detonators, electric for blasting	1.1B	UN0073	II	EXPLOSIVE 1.1B.			62	None	Forbidden	Forbidden	B	2E, 6E, 25E
	Detonators for ammunition	1.2B	UN0364	II	EXPLOSIVE 1.2B.			62	None	Forbidden	Forbidden	B	2E, 6E
	Detonators for ammunition	1.4B	UN0365	II	EXPLOSIVE 1.4B.			62	None	Forbidden	75kg	A	24E
	Detonators for ammunition	1.4S	UN0366	II	EXPLOSIVE 1.4S.			62	None	25kg	100kg	A	9E
	Detonators, non-electric, for blasting	1.1B	UN0029	II	EXPLOSIVE 1.1B.			62	None	Forbidden	Forbidden	B	1E, 2E, 6E
	Detonators, non-electric, for blasting	1.4B	UN0267	II	EXPLOSIVE 1.4B.			62	None	Forbidden	75kg	B	
	Detonators, non-electric for blasting	1.4S	UN0455	II	EXPLOSIVE 1.4S.			62	None	25 kg	100 kg	A	9E
	Diazodinitrophenol, wetted with not less than 40 per cent water or mixture of alcohol and water, by mass.	1.1A	UN0074	II	EXPLOSIVE 1.1A.	111		62	None	Forbidden	Forbidden	E	2E, 6E
	Diethyleneglycol dinitrate, desensitized with not less than 25 percent non-volatile water-insoluble phlegmatizer, by mass.	1.1D	UN0075	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	1E, 4E, 21E
	Dinitroglycoluril (dingu)	1.1D	UN0489	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	

(1) Sym- bols	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(4) Identifica- tion Numbers	(5) Pack- ing group	(6) Labels	(7) Special provisions	(8) Packaging authorizations (§ 173.33)			(9) Quantity limitations		(10) Vessel storage requirements	
							Excep- tions (8A)	Non- bulk pack- aging (8B)	Bulk packag- ing (8C)	Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	Vessel Stow- age (10A)	Other stowage provisions (10B)
D	Dinitrophenolates alkali metals, dry or wetted with less than 15 per cent water, by mass.	1.3C	UN0077	II	EXPLOSIVE 1.3C.			62	None	Forbidden	Forbidden	B	1E, 5E, M2
	Dinitrophenol, dry or wetted with less than 15 per cent water, by mass.	1.1D	UN0076	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	1E, 5E, M2
	Dinitroresorcinol, dry or wetted with less than 15 per cent water, by mass.	1.1D	UN0078	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	1E, 5E
	Dinitrosobenzene	1.3C	UN0406	II	EXPLOSIVE 1.3C.			62	None	Forbidden	Forbidden	B	1E, 5E
	Dipicryl sulfide, dry or wetted with less than 10 per cent water, by mass.	1.1D	UN0401	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Explosive, blasting, type A	1.1D	UN0081	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	1E, 5E, 19E, 21E
	Explosive, blasting, type B	1.1D	UN0082	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Explosive, blasting, type B or Explosive, agent blasting, Type B.	1.5D	UN0331	II	EXPLOSIVE 1.5D.	105,106		62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Explosive, blasting, type C	1.1D	UN0083	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	1E, 5E, 22E
	Explosive, blasting, type D	1.1D	UN0084	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	1E, 5E
	Explosive, blasting, type E	1.1D	UN0241	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Explosive, blasting, type E or Explosive, agent blasting, Type E.	1.5D	UN0332	II	EXPLOSIVE 1.5D.	105,106		62	None	Forbidden	Forbidden	B	1E, 5E
	Explosive pest control devices	1.1E	NA0006	II	EXPLOSIVE 1.1E.			62	None	Forbidden	Forbidden	E	
	Explosive pest control devices	1.4E	NA0412	II	EXPLOSIVE 1.4E.			62	None	Forbidden	75 kg	A	24E
D	Fireworks	1.1G	UN0333	II	EXPLOSIVE 1.1G.	108		62	None	Forbidden	Forbidden	B	
	Fireworks	1.2G	UN0334	II	EXPLOSIVE 1.2G.	108		62	None	Forbidden	Forbidden	B	
	Fireworks	1.3G	UN0335	II	EXPLOSIVE 1.3G.	108		62	None	Forbidden	Forbidden	B	
	Fireworks	1.4G	UN0336	II	EXPLOSIVE 1.4G.	108		62	None	Forbidden	75kg	A	24E
	Fireworks	1.4S	UN0337	II	EXPLOSIVE 1.4S.	108		62	None	25kg	100kg	A	9E
	Flares, aerial	1.3G	UN0093	II	EXPLOSIVE 1.3G.			62	None	Forbidden	75kg	B	
	Flares, aerial	1.4G	UN0403	II	EXPLOSIVE 1.4G.			62	None	Forbidden	75kg	A	24E
	Flares, aerial	1.4S	UN0404	II	EXPLOSIVE 1.4S.			62	None	25kg	100kg	A	9E
	Flares, aerial	1.1G	UN0420	II	EXPLOSIVE 1.1G.			62	None	Forbidden	Forbidden	B	
	Flares, aerial	1.2G	UN0421	II	EXPLOSIVE 1.2G.			62	None	Forbidden	Forbidden	B	
	Flares surface	1.1G	UN0418	II	EXPLOSIVE 1.1G.			62	None	Forbidden	Forbidden	B	

Sym- bols	Hazardous materials descriptions and proper shipping names	Hazard class	Identifica- tion Numbers	Pack- ing group	Labels	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Excep- tions	Non- bulk pack- aging	Bulk pack- aging	Passenger aircraft or railcar	Cargo aircraft only	Vessel Stow- age	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Flares, surface	1.2G	UN0419	II	EXPLOSIVE 1.2G.			62	None	Forbidden	Forbidden	B	
	Flares, surface	1.3G	UN0092	II	EXPLOSIVE 1.3G.			62	None	Forbidden	75kg	B	
	Flash powder	1.1G	UN0094	II	EXPLOSIVE 1.1G.			62	None	Forbidden	Forbidden	B	1E, 5E
	Flash powder	1.3G	UN0305	II	EXPLOSIVE 1.3G.			62	None	Forbidden	Forbidden	B	1E, 5E
	Fracturing devices, explosive, without detona- tors for oil wells.	1.1D	UN0099	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	
	Fuse, igniter tubular metal clad	1.4G	UN0103	II	EXPLOSIVE 1.4G.			62	None	Forbidden	75kg	A	24E
	Fuse, instantaneous, non-detonating (Quick- match).	1.3G	UN0101	II	EXPLOSIVE 1.3G.			62	None	Forbidden	Forbidden	B	
	Fuse, safety	1.4S	UN0105	II	EXPLOSIVE 1.4S.			62	None	Forbidden	100kg	A	9E
	Fuzes, detonating	1.1B	UN0106	II	EXPLOSIVE 1.1B.			62	None	Forbidden	Forbidden	B	2E, 6E
	Fuzes, detonating	1.2B	UN0107	II	EXPLOSIVE 1.2B.			62	None	Forbidden	Forbidden	B	2E, 6E
	Fuzes, detonating	1.4B	UN0257	II	EXPLOSIVE 1.4B.			62	None	Forbidden	75kg	A	24E
	Fuzes, detonating	1.4S	UN0367	II	EXPLOSIVE 1.4S.			62	None	Forbidden	100kg	A	9E
	Fuzes, detonating, with protective features	1.1D	UN0408	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	
	Fuzes, detonating, with protective features	1.2D	UN0409	II	EXPLOSIVE 1.2D.			62	None	Forbidden	Forbidden	B	
	Fuzes, detonating, with protective features	1.4D	UN0410	II	EXPLOSIVE 1.4D.			62	None	Forbidden	75kg	A	24E
	Fuzes, igniting	1.3G	UN0316	II	EXPLOSIVE 1.3G.			62	None	Forbidden	Forbidden	B	
	Fuzes, igniting	1.4G	UN0317	II	EXPLOSIVE 1.4G.			62	None	Forbidden	75kg	B	
	Fuzes, igniting	1.4S	UN0368	II	EXPLOSIVE 1.4S.			62	None	Forbidden	100kg	A	9E
	Grenades, hand or rifle, with bursting charge	1.1D	UN0284	II	EXPLOSIVE 1.1D.		63(b)	62	None	Forbidden	Forbidden	B	
	Grenades, hand or rifle, with bursting charge	1.2D	UN0285	II	EXPLOSIVE 1.2D.		63(b)	62	None	Forbidden	Forbidden	B	
	Grenades, hand or rifle, with bursting charge	1.1F	UN0292	II	EXPLOSIVE 1.1F.		63(b)	62	None	Forbidden	Forbidden	E	
	Grenades, hand or rifle, with bursting charge	1.2F	UN0293	II	EXPLOSIVE 1.2F.		63(b)	62	None	Forbidden	Forbidden	E	
	Grenades practice Hand or rifle	1.4G	UN0452	II	EXPLOSIVE 1.4G.		63(b)	62	None	Forbidden	75kg	B	
	Grenades, practice, hand or rifle	1.4S	UN0110	II	EXPLOSIVE 1.4S.		63(b)	62	None	Forbidden	100kg	A	9E
	Grenades, practice, hand or rifle	1.3G	UN0318	II	EXPLOSIVE 1.3G.		63(b)	62	None	Forbidden	Forbidden	B	

Sym- bols	Hazardous materials descriptions and proper shipping names	Hazard class	Identifica- tion Numbers	Pack- ing group	Labels	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Excep- tions	Non- bulk pack- aging	Bulk packag- ing	Passenger aircraft or railcar	Cargo aircraft only	Vessel stow- age	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Grenades, practice, hand or rifle	1.2G	UN0372	II	EXPLOSIVE 1.2G.	.....	63(b)	62	None	Forbidden ...	Forbidden ...	B	
	Guanyl nitrosaminoguanylidene hydrazine, wetted with not less than 30 per cent water, by mass.	1.1A	UN0113	II	EXPLOSIVE 1.1A.	111		62	None	Forbidden ...	Forbidden ...	E	2E, 6E
	Guanyl nitrosaminoguanyltetrazene (Tetra- zene), wetted with not less than 30 per cent water or mixture of alcohol and water, by mass.	1.1A	UN0114	II	EXPLOSIVE 1.1A.	111		62	None	Forbidden ...	Forbidden ...	E	2E, 6E
	Hexanitrodiphenylamine (Dipicrylamine; Hexyl).	1.1D	UN0079	II	EXPLOSIVE 1.1D.	.....		62	None	Forbidden ...	Forbidden ...	B	1E, 5E
	Hexanitrosilbene	1.1D	UN0392	II	EXPLOSIVE 1.1D.	.....		62	None	Forbidden ...	Forbidden ...	B	1E, 5E
	Hexatonal, cast	1.1D	UN0393	II	EXPLOSIVE 1.1D.	.....		62	None	Forbidden ...	Forbidden ...	B	1E, 5E
	Hexolite, dry or wetted with less than 15 per cent water, by mass.	1.1D	UN0118	II	EXPLOSIVE 1.1D.	.....		62	None	Forbidden ...	Forbidden ...	B	1E, 5E
	Igniters	1.1G	UN0121	II	EXPLOSIVE 1.1G.	.....		62	None	Forbidden ...	Forbidden ...	B	
	Igniters	1.2G	UN0314	II	EXPLOSIVE 1.2...	.....		62	None	Forbidden ...	Forbidden ...	B	
	Igniters	1.3G	UN0315	II	EXPLOSIVE 1.3G.	.....		62	None	Forbidden ...	Forbidden ...	A	
	Igniters	1.4G	UN0325	II	EXPLOSIVE 1.4G.	.....		62	None	Forbidden ...	75kg	A	24E
	Igniters	1.4S	UN0454	II	EXPLOSIVE 1.4S.	.....		62	None	25kg	100kg	A	9E
	Jet perforating guns, charged oil well, without detonator.	1.1D	UN0124	II	EXPLOSIVE 1.D...	.....	63(g)	62	None	Forbidden ...	Forbidden ...	B	
D	Jet perforating guns, charged oil well, without detonator.	1.4D	NA0124	II	EXPLOSIVE 1.4D.	114	63(g)	62	None	Forbidden ...	Forbidden ...	A	24E
	Lead azide, wetted with not less than 20 per cent water or mixture of alcohol and water, by mass.	1.1A	UN0129	II	EXPLOSIVE 1.1A.	111		62	None	Forbidden ...	Forbidden ...	E	2E, 6E
D	Lead mononitroresorcinate	1.1A	NA0473	II	EXPLOSIVE 1.1A.	111		62	None	Forbidden ...	Forbidden ...	E	2E, 6E
	Lead styphnate (Lead trinitroresorcinate), wetted with not less than 20 per cent water or mixture of alcohol and water, by mass.	1.1A	UN0130	II	EXPLOSIVE 1.1A.	111		62	None	Forbidden ...	Forbidden ...	E	2E, 6E
	Lighters, fuse	1.4S	UN0131	II	EXPLOSIVE 1.4S.	.....		62	None	25kg	100kg	A	9E
D	Mannitol hexanitrate (Nitromannite), wetted with not less than 40 percent water, by mass or mixture of alcohol and water.	1.1A	NA0133	II	EXPLOSIVE 1.1A.	111		62	None	Forbidden ...	Forbidden ...	E	1E, 5E
	Mannitol hexanitrate (Nitromannite), wetted with not less than 40 per cent water, or mixture of alcohol and water, by mass.	1.1D	UN0133	II	EXPLOSIVE 1.1D.	111		62	None	Forbidden ...	Forbidden ...	B	1E, 5E
	5-Mercapto-tetrazol-1-acetic acid	1.4C	UN0448	II	EXPLOSIVE 1.4C.	.....		62	None	Forbidden ...	75kg	A	1E, 5E, 24E

Sym- bols	Hazardous materials descriptions and proper shipping names	Hazard class	Identifica- tion Numbers	Pack- ing group	Labels	Special provisions	(3) Packaging authorizations (§ 173.34)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Excep- tions	Non- bulk packag- ing	Bulk packag- ing	Passenger aircraft or raifcar	Cargo aircraft only	Vessel Stow- age	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Mercury fulminate, wetted with not less than 20 per cent water, or mixture of alcohol and water, by mass. Mines with bursting charge	1.1A	UN0135	II	EXPLOSIVE 1.1A.	111		62	None	Forbidden	Forbidden	E	2E, 6E
	Mines with bursting charge	1.1F	UN0136	II	EXPLOSIVE 1.1F.		63(b)	62	None	Forbidden	Forbidden	E	
	Mines with bursting charge	1.1D	UN0137	II	EXPLOSIVE 1.1D.		63(b)	62	None	Forbidden	Forbidden	B	3E, 7E
	Mines with bursting charge	1.2D	UN0138	II	EXPLOSIVE 1.2D.		63(b)	62	None	Forbidden	Forbidden	B	3E, 7E
	Mines with bursting charge	1.2F	UN0294	II	EXPLOSIVE 1.2F.		63(b)	62	None	Forbidden	Forbidden	E	
	5-Nitrobenzotriazol	1.1D	UN0385	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Nitrocellulose, dry or wetted with less than 25 per cent water (or alcohol), by mass.	1.1D	UN0340	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	4E, 27E
	Nitrocellulose, plasticized with not less than 18 per cent plasticizing substance, by mass.	1.3C	UN0343	II	EXPLOSIVE 1.3C.			62	None	Forbidden	Forbidden	B	1E, 5E
	Nitrocellulose, unmodified or plasticized with less than 18 per cent plasticizing substance, by mass.	1.1D	UN0341	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	4E, 27E
	Nitrocellulose, wetted with not less than 25 per cent alcohol, by mass.	1.3C	UN0342	II	EXPLOSIVE 1.3C.			62	None	Forbidden	Forbidden	B	1E, 5E
	Nitroglycerin, desensitized with not less than 40 per cent non-volatile water insoluble phlegmatizer, by mass.	1.1D	UN0143	II	EXPLOSIVE 1.1D, POISON.			62	None	Forbidden	Forbidden	B	1E, 4E, 21E
	Nitroglycerin, solution in alcohol, with more than 1 percent but not more than 10 per cent nitroglycerin.	1.1D	UN0144	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	1E, 4E, 21E
	Nitroguanidine (Picrite), dry or wetted with less than 20 per cent water, by mass.	1.1D	UN0282	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	1E, 5E
	Nitrosoguanidine	1.1A	NA0473	II	EXPLOSIVE 1.1A.			62	None	Forbidden	Forbidden	E	2E, 6E
D	Nitrostarch, dry or wetted with less than 20 per cent water, by mass.	1.1D	UN0146	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	1E, 5E
	Nitrotriazolone; (NTO)	1.1D	UN0490	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	1E, 5E, 25E
	Nitro urea	1.1D	UN0147	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	1E, 5E
	Octolite (Octol), dry or wetted with less than 15 per cent water, by mass.	1.1D	UN0266	II	EXPLOSIVE 1.1D.	104		62	None	Forbidden	Forbidden	B	1E, 5E
D	Pentaerythrite tetranitrate (Pentaerythritol tetranitrate; PETN) wetted with not less than 25 per cent water, by mass, or Pentaerythrite tetranitrate (Pentaerythritol tetranitrate; PETN) desensitized with not less than 15 per cent phlegmatizer by mass.	1.1A	NA0150	II	EXPLOSIVE 1.1A.	111		62	None	Forbidden	Forbidden	B	1E, 5E
	Pentaerythrite tetranitrate; Pentaerythritol tetranitrate (PETN) with not less than 7 per cent wax by mass.	1.1D	UN0411	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	1E, 5E

Sym- bols	Hazardous materials descriptions and proper shipping names	Hazard class	Identifica- tion Numbers	Pack- ing group	Labels	Special provisions	(8) Packaging authorizations (§ 173.33)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Excep- tions	Non- bulk pack- aging	Bulk packag- ing	Passenger aircraft or railer	Cargo aircraft only	Vessel Stow- age	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Pentolite, dry or wetted with less than 15 per cent water, by mass.	1.1D	UN0151	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	1E, 5E
	Potassium salts of aromatic nitro-derivatives, explosive.	1.3C	UN0158	II	EXPLOSIVE 1.3C.			62	None	Forbidden	Forbidden	B	1E, 5E
	Powder cake; (powder paste) wetted with not less than 17 percent alcohol by mass.	1.1C	UN0433	II	EXPLOSIVE 1.1C.			62	None	Forbidden	Forbidden	B	1E, 5E
	Powder cake (Powder paste) wetted with not less than 25 per cent water, by mass.	1.3C	UN0159	II	EXPLOSIVE 1.3C.			62	None	Forbidden	Forbidden	B	1E, 5E
	Powder, smokeless.	1.1C	UN0160	II	EXPLOSIVE 1.1C.			62	None	Forbidden	Forbidden	B	10E, 26E
	Powder, smokeless.	1.3C	UN0161	II	EXPLOSIVE 1.3C.		63(c)	62	None	Forbidden	Forbidden	B	10E, 26E
	Primers, cap type	1.4S	UN0044	II	Explosive 1.4S			62	None	25 kg	100 kg	A	9E
	Primers, cap type	1.1B	UN0377	II	EXPLOSIVE 1.1B.			62	None	Forbidden	Forbidden	B	2E, 6E
	Primers, cap type	1.4B	UN0378	II	EXPLOSIVE 1.4B.			62	None	Forbidden	75kg	B	
	Primers, tubular	1.3G	UN0319	II	EXPLOSIVE 1.3G.			62	None	Forbidden	Forbidden	B	
	Primers, tubular	1.4G	UN0320	II	EXPLOSIVE 1.4G.			62	None	Forbidden	75 kg	A	24E
	Primers, tubular	1.4S	UN0376	II	EXPLOSIVE 1.4S.			62	None	25 kg	100kg	A	9E
	Projectiles, inert with tracer	1.4S	UN0345	II	EXPLOSIVE 1.4S.		63(b)	62	None	25kg	100kg	A	3E, 7E, 9E
	Projectiles, inert, with tracer	1.3G	UN0424	II	EXPLOSIVE 1.3G.		63(b)	62	None	Forbidden	Forbidden	B	3E, 7E
	Projectiles, inert, with tracer	1.4G	UN0425	II	EXPLOSIVE 1.4G.		63(b)	62	None	Forbidden	75kg	A	3E, 7E, 24E
	Projectiles, with burster or expelling charge	1.2D	UN0346	II	EXPLOSIVE 1.2D.		63(b)	62	None	Forbidden	Forbidden	B	3E, 7E
	Projectiles, with burster or expelling charge	1.4D	UN0347	II	EXPLOSIVE 1.4D.		63(b)	62	None	Forbidden	75kg	A	3E, 7E, 24E
	Projectiles, with burster or expelling charge	1.2F	UN0426	II	EXPLOSIVE 1.2F.		63(b)	62	None	Forbidden	Forbidden	E	
	Projectiles, with burster or expelling charge	1.4F	UN0427	II	EXPLOSIVE 1.4F.		63(b)	62	None	Forbidden	Forbidden	E	
	Projectiles, with burster or expelling charge	1.2G	UN0434	II	EXPLOSIVE 1.2G.		63(b)	62	None	Forbidden	Forbidden	B	3E, 7E
	Projectiles, with burster or expelling charge	1.4G	UN0435	II	EXPLOSIVE 1.4G.		63(b)	62	None	Forbidden	75kg	A	3E, 7E, 24E
	Projectiles, with bursting charge	1.1F	UN0167	II	EXPLOSIVE 1.1F.		63(b)	62	None	Forbidden	Forbidden	E	
	Projectiles, with bursting charge	1.1D	UN0168	II	EXPLOSIVE 1.1D.		63(b)	62	None	Forbidden	Forbidden	B	3E, 7E
	Projectiles, with bursting charge	1.2D	UN0169	II	EXPLOSIVE 1.2D.		63(b)	62	None	Forbidden	Forbidden	B	3E, 7E
	Projectiles, with bursting charge	1.2F	UN0324	II	EXPLOSIVE 1.2F.		63(b)	62	None	Forbidden	Forbidden	E	

(1) Sym- bols	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(4) Identifica- tion Numbers	(5) Pack- ing group	(6) Labels	(7) Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Excep- tions	Non- bulk pack- aging	Bulk packag- ing	Passenger aircraft or railcar	Cargo aircraft only	Vessel Stow- age	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Projectiles, with bursting charge	1.4D	UN0344	II	EXPLOSIVE 1.4D.		63(b)	62	None	Forbidden	75kg	A	3E, 7E, 24E
D	Propellant explosive, liquid	1.1C	NA0474	II	EXPLOSIVE 1.1C.			62	None	Forbidden	Forbidden	B	1E, 5E
D	Propellant explosive, liquid	1.3C	NA0477	II	EXPLOSIVE 1.3C.			62	None	Forbidden	Forbidden	B	1E, 5E
D	Propellant explosive, solid	1.1C	NA0273	II	EXPLOSIVE 1.1C.			62	None	Forbidden	Forbidden	B	
D	Propellant explosive, solid	1.3C	NA0274	II	EXPLOSIVE 1.3C.			62	None	Forbidden	Forbidden	B	
	Release devices, explosive	1.4S	UN0173	II	EXPLOSIVE 1.4S.			62	None	25kg	100kg	A	24E
	Rivets, explosive	1.4S	UN0174	II	EXPLOSIVE 1.4S.			62	None	25kg	100kg	A	9E
	Rocket motors	1.3C	UN0186	II	EXPLOSIVE 1.3C.	109	63(d)	62	None	Forbidden	220kg	B	9E
	Rocket motors	1.1C	UN0280	II	EXPLOSIVE 1.1C.	109	63(d)	62	None	Forbidden	Forbidden	B	
	Rocket motors	1.2C	UN0281	II	EXPLOSIVE 1.2C.	109	63(d)	62	None	Forbidden	Forbidden	B	
	Rocket motors, liquid fueled	1.2J	UN0395	II	EXPLOSIVE 1.2J.	109	63(d), 63(e)	62	None	Forbidden	Forbidden	E	7E, 16E, 23E
	Rocket motors, liquid fuelled	1.3J	UN0396	II	EXPLOSIVE 1.3J.	109	63(d), 63(e)	62	None	Forbidden	Forbidden	E	7E, 16E, 23E
	Rocket motors with hypergolic liquids with or without an expelling charge	1.3L	UN0250	II	EXPLOSIVE 1.3L.	109	63(d)	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
	Rocket motors with hypergolic liquids with or without an expelling charge	1.2L	UN0322	II	EXPLOSIVE 1.2L.	109	63(d)	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
	Rockets, line throwing	1.4G	UN0453	II	EXPLOSIVE 1.4G.			62	None	Forbidden	75 kg	B	
	Rockets, line-throwing	1.2G	UN0238	II	EXPLOSIVE 1.2G.			62	None	Forbidden	Forbidden	B	
	Rockets, line-throwing	1.3G	UN0240	II	EXPLOSIVE 1.3G.			62	None	Forbidden	75 kg	B	
	Rockets, liquid fueled with bursting charge	1.2J	UN0398	II	EXPLOSIVE 1.2J.			62	None	Forbidden	Forbidden	E	7E, 16E, 23E
	Rockets, liquid-fuelled with bursting charge	1.1J	UN0397	II	EXPLOSIVE 1.1J.			62	None	Forbidden	Forbidden	E	7E, 16E, 23E
	Rockets, with bursting charge	1.1F	UN0180	II	EXPLOSIVE 1.1F.			62	None	Forbidden	Forbidden	E	
	Rockets, with bursting charge	1.1E	UN0181	II	EXPLOSIVE 1.1E.			62	None	Forbidden	Forbidden	B	
	Rockets, with bursting charge	1.2E	UN0182	II	EXPLOSIVE 1.2E.			62	None	Forbidden	Forbidden	B	
	Rockets, with bursting charge	1.2F	UN0295	II	EXPLOSIVE 1.2F.			62	None	Forbidden	Forbidden	E	
	Rockets, with expelling charge	1.2C	UN0436	II	EXPLOSIVE 1.2C.			62	None	Forbidden	Forbidden	B	
	Rockets, with expelling charge	1.3C	UN0437	II	EXPLOSIVE 1.3C.			62	None	Forbidden	Forbidden	B	

(1) Sym- bols	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(4) Identifica- tion Numbers	(5) Pack- ing group	(6) Labels	(7) Special provisions	(8) Packaging authorizations (§ 173.33)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Excep- tions	Non- bulk pack- aging	Bulk packag- ing	Passenger aircraft or railcar	Cargo aircraft only	Vessel Stow- age	Other stowage provisions
							(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Rockets, with expelling charge	1.4C	UN0438	II	EXPLOSIVE 1.4C.			62	None	Forbidden	75 kg	A	24E
	Rockets, with inert head	1.3C	UN0183	II	EXPLOSIVE 1.3C.			62	None	Forbidden	Forbidden	B	
	Signal devices, hand	1.4G	UN0191	II	EXPLOSIVE 1.4G.			62	None	Forbidden	75kg	A	24E
	Signal devices, hand	1.4S	UN0373	II	EXPLOSIVE 1.4S.			62	None	25 kg	100 kg	A	9E
	Signals, distress, ship	1.1G	UN0194	II	EXPLOSIVE 1.1G.			62	None	Forbidden	Forbidden	B	
	Signals, distress, ship	1.3G	UN0195	II	EXPLOSIVE 1.3G.			62	None	Forbidden	75 kg	B	
	Signals, railway track, explosive	1.1G	UN0192	II	EXPLOSIVE 1.1G.			62	None	Forbidden	Forbidden	B	
	Signals, railway track, explosive	1.4S	UN0193	II	EXPLOSIVE 1.4S.			62	None	25 kg	100 kg	A	9E
	Signals, smoke	1.1G	UN0196	II	EXPLOSIVE 1.1G.			62	None	Forbidden	Forbidden	B	
	Signals, smoke	1.2G	UN0313	II	EXPLOSIVE 1.2G.			62	None	Forbidden	Forbidden	B	
	Signals, smoke	1.4G	UN0197	II	EXPLOSIVE 1.4G.			62	None	Forbidden	75kg	A	24E
	Signals, smoke	1.3G	UN0487	II	EXPLOSIVE 1.3G.			62	None	Forbidden	Forbidden	B	1E, 7E, 25E
	Sodium dinitro-o-cresolate, dry or wetted with less than 15 per cent water, by mass.	1.3C	UN0234	II	EXPLOSIVE 1.3C.			62	None	Forbidden	Forbidden	B	1E, 5E, M2
	Sodium picramate, dry or wetted with less than 20 per cent water, by mass.	1.3C	UN0235	II	EXPLOSIVE 1.3C.			62	None	Forbidden	Forbidden	B	1E, 5E
	Sodium salts of aromatic nitro-derivatives, n.o.s.explosive.	1.3C	UN0203	II	EXPLOSIVE 1.3C.			62	None	Forbidden	Forbidden	B	1E, 5E
	Sounding devices, explosive	1.2F	UN0204	II	EXPLOSIVE 1.2F.			62	None	Forbidden	Forbidden	E	
	Sounding devices, explosive	1.1F	UN0296	II	EXPLOSIVE 1.1F.			62	None	Forbidden	Forbidden	E	
	Sounding devices, explosive	1.1D	UN0374	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	
	Sounding devices, explosive	1.2D	UN0375	II	EXPLOSIVE 1.2D.			62	None	Forbidden	Forbidden	B	
	Substances, explosive, n.o.s.	1.1L	UN0357	II	EXPLOSIVE 1.1L.	101		62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
	Substances, explosive, n.o.s.	1.2L	UN0358	II	EXPLOSIVE 1.2L.	101		62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
	Substances, explosive, n.o.s.	1.3L	UN0359	I	EXPLOSIVE 1.3L.	101		62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
	Substances, explosive, n.o.s.	1.1A	UN0473	II	EXPLOSIVE 1.1A.	101, 111		62	None	Forbidden	Forbidden	E	2E, 6E
	Substances, explosive, n.o.s.	1.1C	UN0474	II	EXPLOSIVE 1.1C.	101		62	None	Forbidden	Forbidden	B	1E, 5E
	Substances, explosive, n.o.s.	1.1D	UN0475	II	EXPLOSIVE 1.1D.	101		62	None	Forbidden	Forbidden	B	1E, 5E

Sym- bols	Hazardous materials descriptions and proper shipping names	Hazard class	Identifica- tion Numbers	Pack- ing group	Labels	Special provisions	(8) Packaging authorizations (§ 173.33)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Excep- tions	Non- bulk pack- aging	Bulk packag- ing	Passenger aircraft or railcar	Cargo aircraft only	Vessel Stow- age	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Substances, explosive, n.o.s.	1.1G	UN0476	II	EXPLOSIVE 1.1G.	101		62	None	Forbidden	Forbidden	B	1E, 8E
	Substances, explosive, n.o.s.	1.3C	UN0477	II	EXPLOSIVE 1.3C.	101		62	None	Forbidden	Forbidden	B	1E, 5E
	Substances, explosive, n.o.s.	1.3G	UN0478	II	EXPLOSIVE 1.3G.	101		62	None	Forbidden	Forbidden	E	1E, 8E
	Substances, explosive, n.o.s.	1.4C	UN0479	II	EXPLOSIVE 1.4C.	101		62	None	Forbidden	75kg	A	1E, 5E, 24E
	Substances, explosive, n.o.s.	1.4D	UN0480	II	EXPLOSIVE 1.4D.	101		62	None	Forbidden	75kg	A	1E, 5E, 24E
	Substances, explosive, n.o.s.	1.4S	UN0481	II	EXPLOSIVE 1.4S.	101		62	None	25kg	100kg	A	9E
	Substances, explosive, n.o.s.	1.4G	UN0485	II	EXPLOSIVE 1.4G.	101		62	None	Forbidden	75kg	A	1E, 8E, 24E
	Substances, explosive, very insensitive; (sub- stances, EVI), n.o.s.	1.5D	UN0482	II	EXPLOSIVE 1.5D.	101		62	None	Forbidden	Forbidden	B	1E, 5E
	Tetranitroaniline	1.1D	UN0207	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Tetrazol-1-acetic acid	1.4C	UN0407	II	EXPLOSIVE 1.4C.			62	None	Forbidden	75kg	A	1E, 5E, 24E
	Torpedoes, liquid fuelled, with inert head	1.3J	UN0450	II	EXPLOSIVE 1.3J.		63(b)	62	None	Forbidden	Forbidden	E	7E, 16E, 23E
	Torpedoes, liquid fuelled, with or without bursting charge.	1.1J	UN0449	II	EXPLOSIVE 1.1J.		63(b)	62	None	Forbidden	Forbidden	E	7E, 16E, 23E
	Torpedoes with bursting charge	1.1E	UN0329	II	EXPLOSIVE 1.1E.		63(b)	62	None	Forbidden	Forbidden	B	
	Torpedoes with bursting charge	1.1F	UN0330	II	EXPLOSIVE 1.1F.		63(b)	62	None	Forbidden	Forbidden	B	
	Torpedoes with bursting charge	1.1D	UN0451	II	EXPLOSIVE 1.1D.		63(b)	62	None	Forbidden	Forbidden	B	
	Tracers for ammunition	1.3G	UN0212	II	EXPLOSIVE 1.3G.			62	None	Forbidden	Forbidden	B	
	Tracers for ammunition	1.4G	UN0306	II	EXPLOSIVE 1.4G.			62	None	Forbidden	75kg	A	24E
	Trinitroaniline or Picramide	1.1D	UN0153	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Trinitroanisole	1.1D	UN0213	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Trinitrobenzene, dry or wetted with less than 30 per cent water, by mass.	1.1D	UN0214	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Trinitrobenzenesulfonic acid	1.1D	UN0386	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	E	1E, 5E, 19E
	Trinitrobenzoic acid, dry or wetted with less than 30 per cent water, by mass.	1.1D	UN0215	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitrochlorobenzene; (Picryl chloride)	1.1D	UN0155	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitro-meta-cresol	1.1D	UN0216	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitrofluorenone	1.1D	UN0387	II	EXPLOSIVE 1.1D.			62	None	Forbidden	Forbidden	B	1E, 5E, 19E

(1) Sym- bols	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(4) Identifica- tion Numbers	(5) Pack- ing group	(6) Labels	(7) Special provisions	(8) Packaging authorizations (§ 173.33)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Excep- tions (8A)	Non- bulk pack- aging (8B)	Bulk packag- ing (8C)	Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	Vessel Stow- age (10A)	Other stowage provisions (10B)
(1)	Trinitronaphthalene.....	1.1D	UN0217	II	EXPLOSIVE 1.1D.	.....		62	None	Forbidden....	Forbidden....	B.....	1E, 5E, 19E
	Trinitrophenetole.....	1.1D	UN0218	II	EXPLOSIVE 1.1D.	.....		62	None	Forbidden....	Forbidden....	B.....	1E, 5E, 19E
	Trinitrophenol (Picric acid), dry or wetted with less than 30 per cent water, by mass.	1.1D	UN0154	II	EXPLOSIVE 1.1D.	.....		62	None	Forbidden....	Forbidden....	B.....	1E, 5E
	Trinitrophenylmethylnitramine (Tetryl).....	1.1D	UN0208	II	EXPLOSIVE 1.1D.	.....		62	None	Forbidden....	Forbidden....	B.....	1E, 5E
	Trinitroresorcinol (Syphnic acid), dry or wetted with less than 20 per cent water, or mixture of alcohol and water, by mass.	1.1D	UN0219	II	EXPLOSIVE 1.1D.	.....		62	None	Forbidden....	Forbidden....	B.....	1E, 5E
	Trinitroresorcinol (Syphnic acid), wetted with not less than 20 per cent water, or mixture of alcohol and water by mass.	1.1D	UN0394	II	EXPLOSIVE 1.1D.	.....		62	None	Forbidden....	Forbidden....	B.....	1E, 5E
	Trinitrotoluene (TNT) and Trinitrobenzene mixtures or Trinitrotoluene (TNT) and Hex- anitrostilbene mixtures.	1.1D	UN0388	II	EXPLOSIVE 1.1D.	.....		62	None	Forbidden....	Forbidden....	B.....	1E, 5E, 19E
	Trinitrotoluene (TNT), dry or wetted with less than 30 per cent water, by mass.	1.1D	UN0209	II	EXPLOSIVE 1.1D.	.....		62	None	Forbidden....	Forbidden....	B.....	1E, 5E
	Trinitrotoluene (TNT) mixtures containing Trinitrobenzene and Hexanitrostilbene.	1.1D	UN0389	II	EXPLOSIVE 1.1D.	.....		62	None	Forbidden....	Forbidden....	B.....	1E, 5E
	Tritonal.....	1.1D	UN0390	II	EXPLOSIVE 1.1D.	.....		62	None	Forbidden....	Forbidden....	B.....	1E, 5E
	Urea nitrate, dry or wetted with less than 20 per cent water, by mass.	1.1D	UN0220	II	EXPLOSIVE 1.1D.	.....		62	None	Forbidden....	Forbidden....	B.....	1E, 5E
	Warheads, rocket with burster or expelling charge.	1.4D	UN0370	II	EXPLOSIVE 1.4D.	.....		62	None	Forbidden....	75kg.....	A.....	3E, 7E, 24E
	Warheads, rocket with burster or expelling charge.	1.4F	UN0371	II	EXPLOSIVE 1.4F.	.....		62	None	Forbidden....	Forbidden....	E.....	
	Warheads, rocket with bursting charge.....	1.1D	UN0286	II	EXPLOSIVE 1.1D.	.....		62	None	Forbidden....	Forbidden....	B.....	3E, 7E
	Warheads, rocket with bursting charge.....	1.2D	UN0287	II	EXPLOSIVE 1.2D.	.....		62	None	Forbidden....	Forbidden....	B.....	3E, 7E
	Warheads, rocket with bursting charge.....	1.1F	UN0369	II	EXPLOSIVE 1.1F.	.....		62	None	Forbidden....	Forbidden....	E.....	
	Warheads, torpedo with bursting charge.....	1.1D	UN0221	II	EXPLOSIVE 1.1D.	.....		62	None	Forbidden....	Forbidden....	B.....	3E, 7E
	Zirconium picramate, dry or wetted with less than 20 per cent water, by mass.	1.3C	UN0236	II	EXPLOSIVE 1.3C.	.....		62	None	Forbidden....	Forbidden....	B.....	1E, 5E

§ 173.52 [Corrected]

3. On page 18461, in Table 1 of paragraph (b) of § 173.52, for the first column entry which begins with "Secondary detonating explosive substance * * *" correct the corresponding second column entry to read "D" and the third column entry to read "1.1D, 1.2D, 1.4D, 1.5D."

§ 173.62 [Corrected]

On page 18468, in the first column, in § 173.62 paragraph (b), correct the last two full sentences to read "The second column of the explosives table specifies the packaging method or methods (e.g., US032) which must be used to pack a particular explosive. The table of packaging methods in paragraph (c) of this section defines the packaging methods."

§ 173.62 [Corrected]

5. On page 18469, in the third column, in the Explosives Table set forth in paragraph (b) of § 173.62, correct the entry in column 1 of the Explosives Table which reads "UN0745" to read "UN0475".

§ 173.62 [Corrected]

6. On page 18469, in the third column, add the following entries after the last entry in the Explosives Table set forth in paragraph (b) of § 173.62:

EXPLOSIVES TABLE

Identification No.	Packaging Methods
(1)	(2)
[ADD]	
UN0485	US072
UN0486	US029
UN0487	US067
UN0488	US023
UN0489	US002
UN0499	US002
NA0150	US003
NA0273	US019
NA0274	US019
NA0474	US072
NA0477	US072

§ 173.62 [Corrected]

7. In the Table of Packaging Methods set forth in paragraph (c) of § 173.62—

a. On page 18471, add "5" to column 4 to correspond with the entry "US011 (UN-E12)" which appears in column 1.

b. On page 18474, in column 3 which corresponds to the entry "US041 (UN-

E121)" change the entry "Fiberboard (4C1)" to read "Fiberboard (4G)".

c. On page 18474, in column 4 which corresponds to the entry "US046 (UN-E126)" delete "14".

d. On page 18474, in column 1, change "US047 (UN-3127)" to read "US047 (UN-E127)".

e. On page 18474, in column 3 which corresponds to the entry "US047 (UN-E127)", change "(SA2)" to read "(4A2)".

f. On page 18475, in column 1, change "US058 (UN141)" to read "US058 (UN-E141)".

g. On page 18475, in column 3 which corresponds to the entry "US061 (UN-E145)", change the entry "Fiberboard (4C1)" to read "Fiberboard (4G)" and add the entry "Wood, ordinary (4C1)".

h. On page 18476, remove the information in columns 1 through 4 for the entries "US061 (UN-E145)" and "US062 (UN-E146)".

Issued in Washington, DC on June 11, 1990, under authority delegated in 49 CFR part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 90-13851 Filed 6-14-90; 8:45 am]

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Federal Register

Friday
June 15, 1990

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for
Housing

24 CFR Part 100
Fair Housing Accessibility Guidelines;
Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 100

[Docket No. N-90-2011: FR 2665-N-03]

Fair Housing Accessibility Guidelines

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of proposed accessibility guidelines and advance invitation to comment on proposed rule change.

SUMMARY: Title VIII of the Civil Rights Act of 1968 prohibits discrimination in the sale, rental, or financing of dwellings based on race, color, religion, sex, or national origin. The Fair Housing Amendments Act of 1988 (Fair Housing Act or the Act) expanded coverage of Title VIII to prohibit discriminatory housing practices based on handicap and familial status. As amended, section 804(f)(3)(c) provides that unlawful discrimination includes a failure to design and construct covered multifamily dwellings available for first occupancy after March 13, 1991 in accordance with certain accessibility requirements. On January 23, 1989 (54 FR 3232), HUD published a final rule implementing the Act. The rule stated that HUD would publish accessibility guidelines to provide builders and developers with guidance on how to comply with the specific accessibility requirements of the Act. Today's notice publishes for public comment proposed accessibility guidelines. The proposed guidelines are intended to provide technical guidance only, and are not mandatory.

DATES: Comments must be received by September 13, 1990.

ADDRESSES: Interested persons are invited to submit comments on the Proposed Notice to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Comments should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-2575. (This is not a toll-free number.)

Only public comments of six or fewer total pages will be accepted via the FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 708-2084). (This is not a toll-free number.)

FOR FURTHER INFORMATION CONTACT: For technical questions, contact Margaret Milner (202) 708-3287 (voice) or (202) 708-3938 (TDD); for fair housing enforcement questions, contact Peter Kaplan (202) 708-2904 (voice) or (202) 708-0015 (TDD). (The above listed numbers are not toll-free numbers.) The toll-free TDD number is 1-800-537-8099.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Civil Rights Act of 1968 makes it unlawful to discriminate in any aspect relating to the sale, rental or financing of dwellings or in the provision of brokerage services or facilities in connection with the sale or rental of a dwelling because of race, color, religion, sex or national origin. The Fair Housing Amendments Act of 1988 expanded coverage of title VIII to prohibit discriminatory housing practices based on handicap and familial status. As amended, section 804(f)(3)(c) provides that unlawful discrimination includes a failure to design and construct covered multifamily dwellings available for first occupancy on or after March 13, 1991 (30 months after the date of enactment) in accordance with certain accessibility requirements.

The Act makes it unlawful to fail to design and construct these multifamily dwellings so that (1) public use and common use portions of the dwellings are readily accessible to and usable by persons with handicaps; (2) all doors within such dwellings which are designed to allow passage into and within the premises are sufficiently wide to allow passage by persons in wheelchairs; and (3) all premises within such dwellings contain specified features of adaptive design.

Congress believed that the accessibility provisions would (1) facilitate the ability of persons with handicaps to enjoy full use of their homes without imposing unreasonable requirements on homebuilders, landlords and non-handicapped tenants; (2) be essential for equal access and to avoid future de facto exclusion of persons with handicaps; and (3) be easy

to incorporate in housing design and construction. Congress predicted that compliance with these minimal standards would eliminate many of the barriers which discriminate against persons with disabilities in their attempts to obtain equal housing opportunities. (H.R. Rep. No. 711, 100th Cong. 2d Sess. 27-28 (1988) ("House Report")).

HUD implemented the Act by a final rule published January 23, 1989 (54 FR 3232). Section 100.205 of that rule addressed design and construction requirements. In the preamble to the proposed rule, published on November 8, 1988 (53 FR 215, pp. 45004-45005), the Department had provided guidance on those areas where interpretation was most obviously needed. Among other explanatory paragraphs, the preamble stated that the regulations did not require that fixtures, cabinetry or plumbing be adjustable. The preamble also noted that the "usable kitchen and bathroom" provision does not require that a turning radius be provided "in every situation." Further, the preamble pointed out that a dwelling unit that complies fully with the *American National Standard for Buildings and Facilities Providing Accessibility and Usability for Physically Handicapped People* (ANSI A117.1-1986, "ANSI Standard"), goes beyond what is required by the Fair Housing Act, and cited as examples of features not expected under the Act, requirements such as kitchen cabinets at, or adjustable to, the proper height for a wheelchair user and space to turn a wheel chair in all rooms. Then, in the preamble to the final rule, HUD stated that it would provide more specific guidance on these requirements in a notice of proposed guidelines subject to public notice and comment.

On August 2, 1989 (54 FR 31856), HUD published an advance notice of intention to develop and publish fair housing accessibility guidelines. The purpose of the advance notice was to solicit early public comment on the content of the accessibility guidelines, and to outline HUD's procedures for the development of the guidelines.

In order to permit the preparation and publication of proposed guidelines at the earliest possible time, the advance notice did not include a closing date for public comment. HUD has, to the extent practicable, considered all public comments submitted in response to the advance notice. Comments that were not received in time for consideration will be addressed in the final guidelines.

In addition to public comments received in response to the advance

notice, HUD met with, and accepted written submissions from, major interest groups on the accessibility guidelines. HUD also contracted with Southern Building Code Congress International (SBCCI) to recommend criteria for determining when it is impractical to meet the design and construction requirements due to terrain or unusual characteristics of the site. HUD considered the recommendations of the contractor, comments by major interest groups and the public comments to the advance notice in the development of these criteria.

In the course of these consultations, some distinct alternatives for achieving compliance became apparent. The Department invites comment by the public on the relative merits of three optional approaches, including the impact on accessibility and affordability. The alternatives are: (1) Option one—Guidelines developed by HUD and set forth under the heading "Design Guidelines for Accessible/Adaptable Dwellings"; (2) Option two—Recommendations for the guidelines that were developed by a voluntary task force organized by the National Association of Home Builders (NAHB) and the National Coordinating Council on Spinal Cord Injury (NCCSCI); and (3) Option three—An "adaptable accommodation" approach that would identify those features that could be adapted on a case-by-case, as needed basis during a unit's occupancy. Each of these options is described in detail below. Comment on each of the options, or on particular features of each option, are invited for the Department's consideration in development of the final Notice.

1. Option One

The accessibility guidelines contained in this proposed option provide builders and developers and others with technical guidance on the accessibility requirements of the Fair Housing Act. When applied to the design of a multifamily dwelling, the option one guidelines would result in a unit that would meet HUD's minimum expectations for compliance. These guidelines, however, would not be mandatory, but would serve as performance standards.

In other words, the option one guidelines do NOT prescribe specific requirements which must be met, and which, if not met, would constitute unlawful discrimination under the Fair Housing Act. Rather, these are performance standards guiding builders and developers in determining which provisions of the 1986 *American National Standard for Buildings and*

Facilities Providing Accessibility and Usability for Physically Handicapped Persons (ANSI A117.1-1986, "ANSI Standard") to follow; when departures from ANSI are appropriate and permissible; and the level of accessibility necessary to achieve compliance. Builders and developers may choose to depart from these guidelines and seek alternate ways to demonstrate that they have met the requirements of the Fair Housing Act.

The Department recognizes that projects now are being designed, in advance of publication of the guidelines, that may become available for occupancy after March 13, 1991. Efforts to comply with the guidelines contained in option one in the design of projects which would be completed before issuance of the final guidelines would be considered as evidence of compliance with the Fair Housing Act in connection with the Department's investigation of any complaints.

Option one refers to the applicable ANSI provision where the ANSI Standard is recommended for compliance. For example, the guidelines cite the ANSI Standard in the discussion of accessibility of common use areas. Where the ANSI Standard is not referenced in its entirety, the option one guidelines explain the variations from the ANSI Standard. (Rather than restate the referenced ANSI provisions, with the agreement of the American National Standards Institute HUD is printing the ANSI Standard, in its entirety, as an appendix to this proposed notice. Since this is being done to assist public response to the proposal, the final notice of these accessibility guidelines will not include the complete text of the ANSI Standard.)

It is possible that a builder may apply the guidelines inappropriately, or misinterpret the guidelines, thus resulting in an area of design that is not in compliance with the Fair Housing Amendments Act. For example, in planning various kitchen designs and layouts, a builder may misinterpret a section of these guidelines and thus, despite drawing from these guidelines, inadvertently design a bathroom or kitchen that is not, in fact, usable by a person in a wheelchair. In this situation, noncompliance could result. Similarly a builder could design a kitchen with dimensions different from those set forth in the guidelines but which would nonetheless be accessible and therefore in compliance. Accessibility guidelines cannot guarantee that situations such as these will not happen. Rather, the final guidelines will provide builders with a safe harbor that, short of requiring all of

the provisions of the ANSI, will illustrate acceptable methods of compliance with the Fair Housing Amendments Act and section 100.205 of HUD's implementing regulation that will meet HUD's expectations, so far as the guidelines address a specific issue. These guidelines are intended to provide a safe harbor for compliance with respect to those issues they cover. Some issues, of course, cannot be foreseen and will need to be addressed on a case-by-case basis. Where the ANSI Standard is not applicable, the language of the statute itself is the safest guide. The degree of scoping, accessibility, and the like are of course limited by a principle of reasonableness and cost.

A principal concern addressed by commenters and considered by HUD was how to establish guidelines for adaptive features required in the dwelling units and other elements and features required to be accessible that provide the level of accessibility envisioned by Congress, while maintaining affordability of new multifamily construction.

The following description of a multifamily dwelling that meets the option one guidelines provides the context for reviewing the individual requirements itemized in section 5. A resident or visitor with a handicap would enter through an accessible entrance using an accessible route from a vehicular or pedestrian arrival point. This arrival point could be, for example, the public transportation stop, an entrance drive with a passenger drop-off area, the resident parking area, or a public sidewalk. The option one guidelines identify the specific arrival points to be considered. Each of these points, if provided at the site, would connect with an accessible entrance via an accessible route, unless site characteristics make it impractical for a given route. In such a case, only the impractical route would be exempt; routes to all the other arrival points would be expected to be accessible. The accessible entrance, for buildings with more than one common entrance, cannot be an entrance that is not intended for regular use by the residents, such as a door at a loading area.

Within the building, public and common use areas would be accessible according to generally-accepted standards, such as the ANSI A117.1-1986 or comparable State or local codes. If built-in tenant mailboxes are clustered on a lobby wall, for example, at least one row of mailboxes would be mounted within the reach range of a person in a wheelchair. If a common laundry room is provided, at least one washer and

dryer per laundry room would be positioned to be within reach of and allow parallel approach to the appliances by a person in a wheelchair. Front loading washers would not be required. However, where front loading washers are not provided, owners would be expected to provide an assistive device if needed by a resident in order to use the machine.

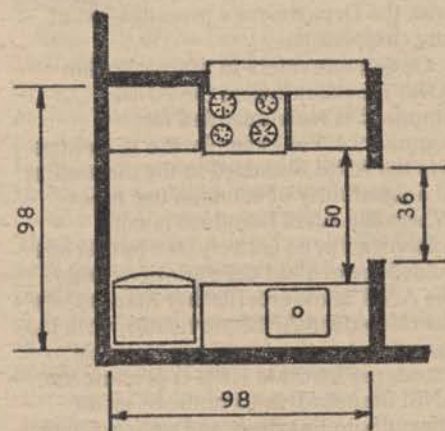
The dwelling units required to meet the Fair Housing Act regulations would be on an accessible route from the entrance. Within the unit, all doorways intended for passage would provide a 32-inch clear width when opened 90 degrees. Minimum corridor widths of 36 inches and level surfaces would offer an accessible route throughout the unit, including access to exterior decks, balconies or patios with a beveled or sloped exterior threshold no higher than $\frac{3}{4}$ inch.

Adaptive design features within the unit would include light switches, environmental controls, and electrical outlets mounted no higher than 48 inches above the floor and no lower than 15 inches above the floor. Kitchens and bathrooms would be large enough to allow wheelchair users or people using other mobility aids to have parallel or forward approach to all fixtures and appliances. These rooms would not necessarily provide a 60-inch turning radius. The wheelchair user who entered the bathroom or kitchen facing forward might have to back out of the space.

Similarly, the Fair Housing regulations do not call for adjustable counter tops or removable base cabinets in kitchen or

bath. In the kitchen, for example, if a parallel approach to sink and cooktop can be provided for wheelchair users, no undercounter clear space would be expected.

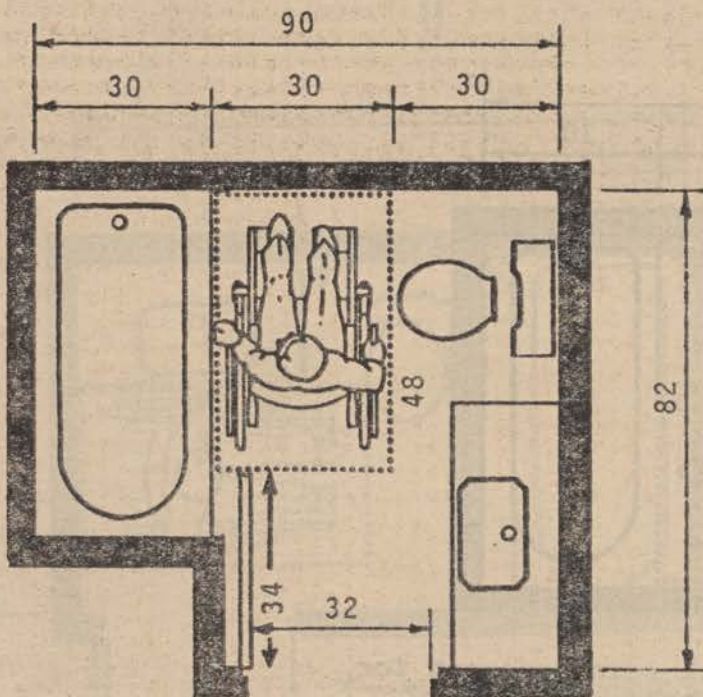
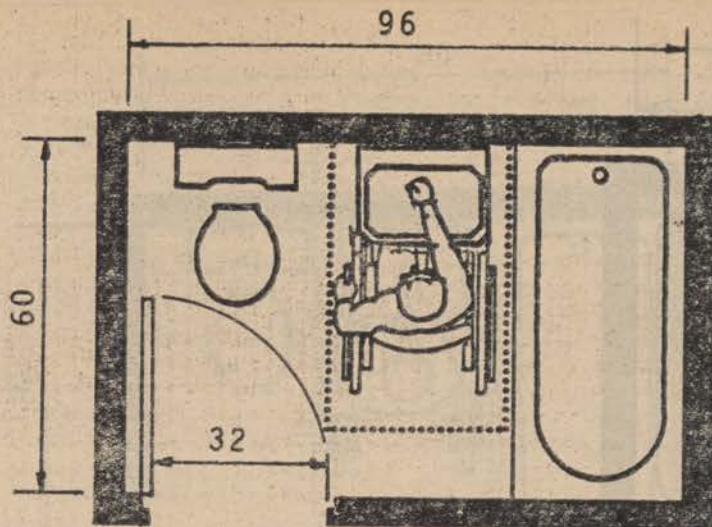
The floor plan shown below illustrates the application of the option one guidelines. The drawing is an actual kitchen layout from an apartment design that has been used by a private developer for multifamily construction in the southeastern United States. This kitchen, as originally planned and constructed, would meet the option one guidelines for usable kitchens, provided that range or cooktop controls were properly placed. HUD requests comment on the safety issues arising from front-placed controls, particularly with regard to the danger to children.

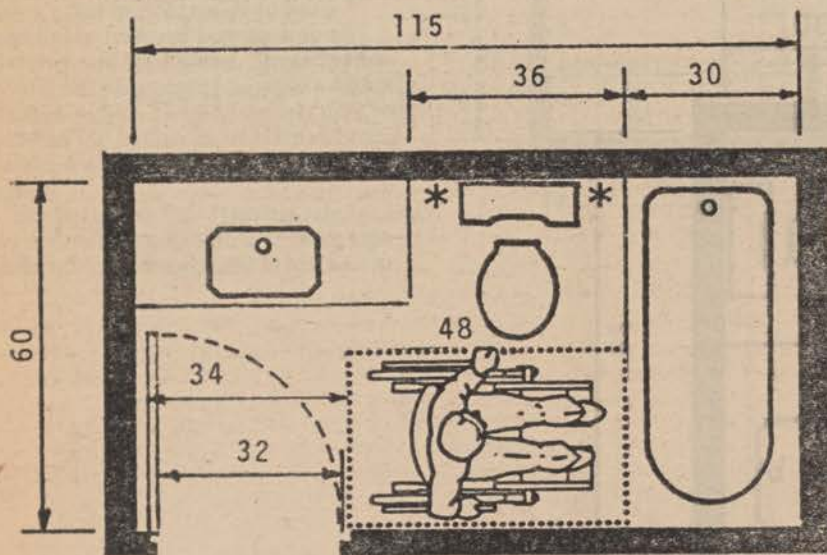
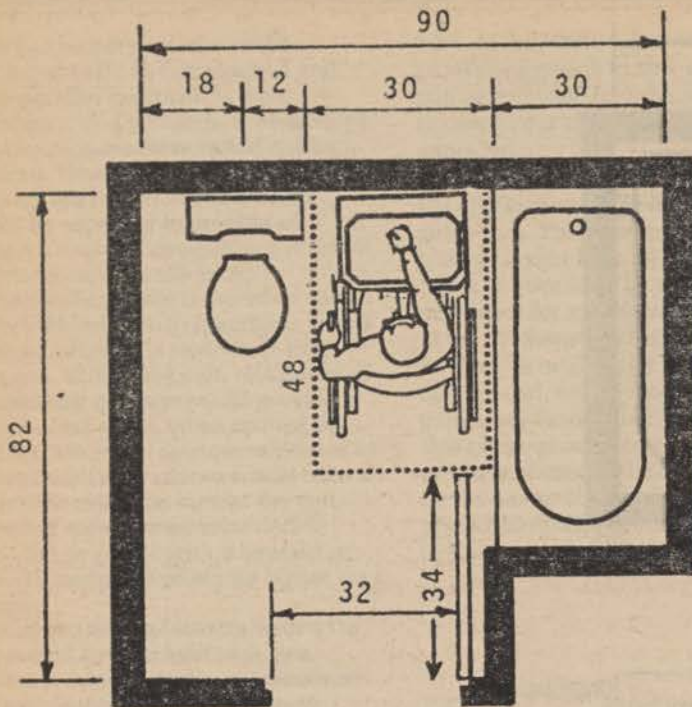


All full bathrooms (that is, those having toilet, lavatory and bathtub or shower) would have walls reinforced for grab bars at appropriate points and would provide sufficient maneuvering space within the bathroom for a person using a wheelchair or other assistive device to enter and close the door, use the fixtures, reopen the door and exit. Doors may swing into the clear floor space provided at any fixture if this maneuvering space is provided. Maneuvering spaces may include any knee space or toe space available below bathroom fixtures, and clear floor space at fixtures may overlap.

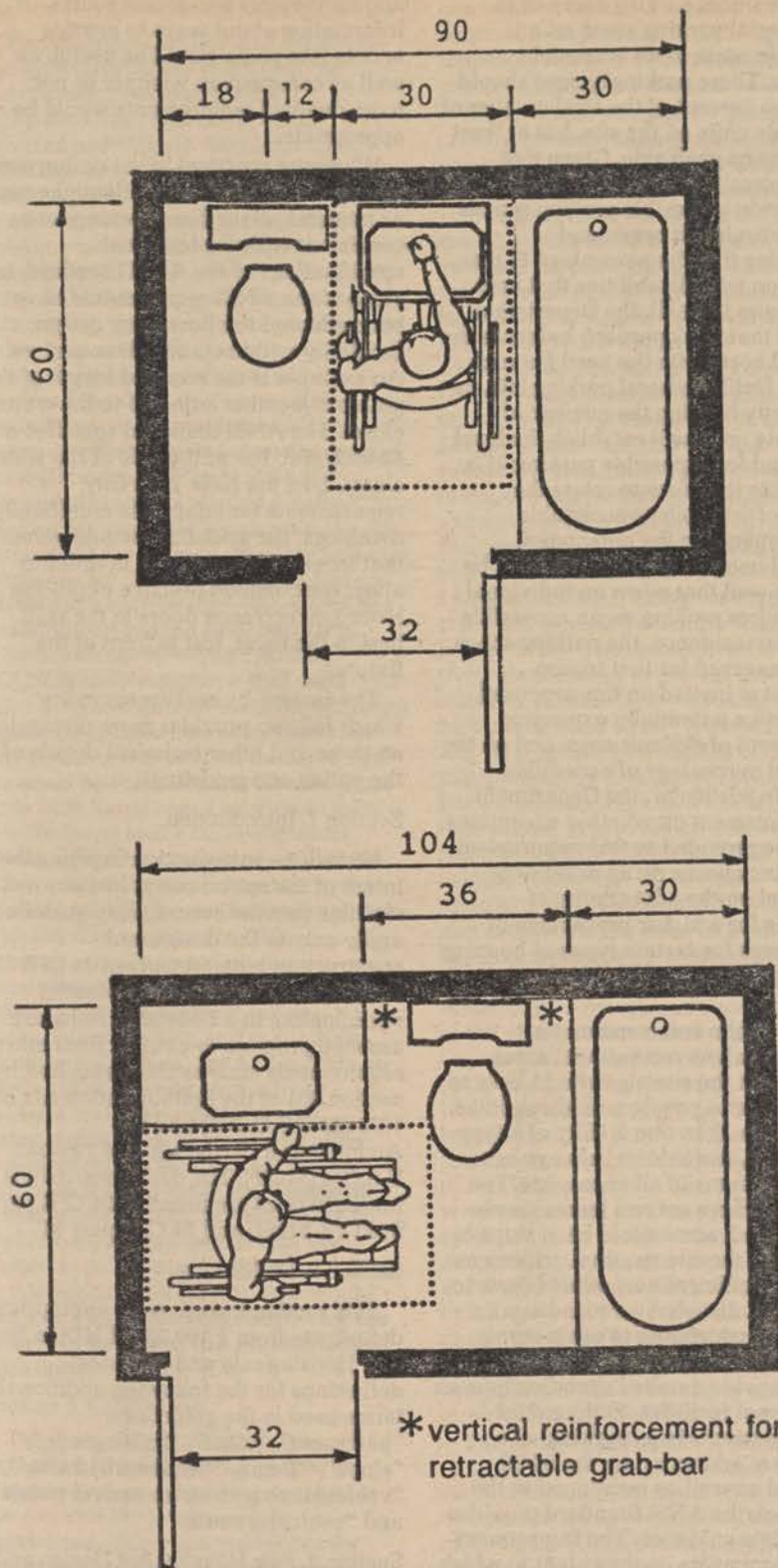
The option one guidelines for usable bathrooms would permit a variety of room sizes and layouts. The examples shown here illustrate acceptable layouts that have been designed within typical bathroom sizes generally found in multifamily construction.

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* vertical reinforcement for retractable grab-bar



Accessibility also would be provided to public and common use areas elsewhere on the site that are available to residents of the building. Except in cases of extreme terrain or impractical site characteristics, installation of an accessible pedestrian route from the dwelling to one or more public or common use areas would be provided. When this is not possible due to site conditions, the option one guidelines would permit as an acceptable alternative providing access via a vehicular route, so long as necessary site provisions such as parking spaces and curb ramps are provided at the public or common use facility. (HUD invites comment on the appropriateness of permitting vehicular access. This provision, like others, is intended to implement the congressional mandate to ensure accessibility to housing without causing undue increases in the cost of housing construction.)

Although a minimum amount of accessible parking on an accessible route would be expected on every site that has an accessible building, every accessible building will not necessarily have an accessible route to the parking area serving it.

Extreme site conditions could result in a parking area that is not on an accessible pedestrian route. However, even when a parking area serving an accessible building is not on an accessible pedestrian route, resident and visitor parking would provide parking spaces of appropriate width, for many people who use crutches or braces will be able to use a path with steps. Resident parking spaces with necessary clearances would be provided on request; wherever visitor parking is provided on the site, an appropriate number of accessible spaces for visitors would be reserved. For those residents who need wide parking spaces, and for accessible visitor parking, parking spaces that meet ANSI specifications would be acceptable. (It should be noted that the design and construction requirements which these guidelines interpret are only one element among several that constitute protections afforded people with disabilities under the Fair Housing Act. In the context of the overall Fair Housing Act protections, access to parking, like other individual disability-related needs, is subject to the requirement to provide a reasonable accommodation to the needs of a protected person.)

As noted, where parking on a site is provided for residents, a minimum amount of parking on an accessible route must be provided for disabled individuals. This parking may be in

regular resident parking areas or in other special parking areas on an accessible route to an accessible entrance. These parking spaces should equal two percent of the total number of accessible units on the site, but at least one space on each side. Given that every accessible building with parking will provide accessible parking spaces for nonwheelchair users, and recognizing that the percentage of the population with disabilities that uses wheelchairs is small, the Department believes that this approach balances the potential costs with the need for such parking. Unlike general parking lots, in multifamily housing the number of accessible units will establish the level of demand for accessible parking; it is reasonable therefore to relate the number of wheelchair-accessible parking spaces to the anticipated potential number of units. It should be noted as well that when an individual who requires parking on an accessible route is in residence, the parking space will be reserved for that tenant. Comment is invited on this proposed solution to a potentially expensive requirement of difficult sites, and on the proposed percentage of accessible spaces. In particular, the Department invites comment on whether exceptions should be provided to this requirement for parking spaces on an accessible route, and on the advisability of providing for a higher percentage of such spaces for certain types of housing (for example, in housing for elderly people).

Other public and common-use facilities such as recreational areas provided on the site also would have to be available to people with disabilities. Where more than one facility of a type is provided, it would not always be necessary to make all accessible. For example, where several tennis courts are provided, some could have steps to the court if the site required, so long as there are sufficient accessible courts to assure that disabled persons have an equitable opportunity to use a tennis court. While the option one guidelines do not provide detailed specifications on recreational facilities, to the extent certain elements (e.g., parking) of a facility are addressed by the ANSI Standard as well as mentioned in the guidelines, the ANSI Standard provides appropriate guidance. The Department invites comments on the extent to which more specific guidance could be provided on such elements. For example, option one guidelines have no requirements for swimming pools beyond access to parking, if provided, and to the entrance to the pool facility

and its showers and locker rooms. Information about ways to provide access into pools would be useful, as well as comment on whether or not more detailed requirements would be appropriate.

Wherever practical in the option one guidelines, technical specifications such as minimum clear door openings are consistent with the technical specifications of the ANSI Standard. In some cases, ANSI requirements have been adapted to allow more design flexibility within standard room sizes. An example is the required length of the grab bar location adjacent to the water closet. The ANSI Standard specifies a 42-inch grab bar at the side of the water closet. Like the New York City requirements for adaptable multifamily dwellings, the guidelines would permit that length to be reduced, in order to allow the common practice of placing bathroom entrance doors in the wall beside the toilet, just in front of the fixture.

The section-by-section summary which follows provides more discussion on these and other technical details of the option one guidelines.

Section 1. Introduction

Section 1—Introduction explains the intent of the option one guidelines and clarifies that the accessibility guidelines apply only to the design and construction requirements of 24 CFR 100.205, and do not relieve persons participating in a Federal or federally assisted program or activity from other requirements such as those required by section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the Architectural Barriers Act of 1968 (42 U.S.C. 4151-57). The design provisions for those laws are found at 24 CFR part 8 (53 FR 20216) and 24 CFR part 40.

Section 2. Definitions

This section incorporates appropriate definitions from § 100.201 of HUD's final Fair Housing rule and provides definitions for the following additional terms used in the guidelines: "bathroom", "clear", "finish grade", "slope", "T-turn", "undisturbed site", "vehicular or pedestrian arrival points" and "vehicular route."

Section 3. Fair Housing Act Design and Construction Requirements

This section reprints § 100.205 (Design and Construction Requirements) contained in HUD's final rule implementing the Fair Housing Act.

Section 4. Application of the Guidelines

This section specifies that the option one guidelines apply to all covered multifamily dwellings for first occupancy after March 13, 1991. Covered multifamily dwellings means buildings consisting of four or more dwelling units if such buildings have one or more elevators; and ground floor dwelling units in other buildings consisting of four or more dwelling units. In both the proposed and final rulemaking, the Department stated that a dwelling unit with two or more floors in a nonelevator building is not a "covered dwelling unit" even if it has a ground-floor entrance, because the entire dwelling unit is not on the ground floor. (Of course, if the unit had an internal elevator, it would be subject to the Fair Housing Act requirements.) An example of this type of dwelling unit is a rowhouse (or townhouse) development where each two- or three-story unit has an individual ground floor entrance.

Some commenters (e.g., NAHB/NCCSCI) have suggested that units with more than one floor in elevator buildings should be required to comply with the Fair Housing Act only on the floor that is served by the building elevator. Thus units with living space located in lofts, or with living space on two or more floors, would be accessible only on the floor or floors with an entrance to the elevator lobby. The guidelines have not adopted this application. This determination is based on the Department's interpretation of the Fair Housing Act requirement for an accessible route into and through the dwelling unit. Thus, the Act appears to require that all units with lofts or multiple levels be equipped with internal elevators, chair lifts or other means of access to the upper levels. Although it is not clear that Congress intended this result, the Department's preliminary assessment is that the statute appears to offer little flexibility in this regard. The Department would like to solicit comments addressing the economic impact of this requirement of such units.

Section 5. Guidelines

The option one guidelines are organized to follow the sequence of requirements as they are presented in the Act and the implementing regulations. There are guidelines for seven requirements: (1) An accessible entrance on an accessible route; (2) accessible and usable public and common use areas; (3) doors usable by a person in a wheelchair; (4) accessible route into and through the covered dwelling unit; (5) light switches,

electrical outlets and environmental controls in accessible locations; (6) bathroom walls reinforced for grab bars; and (7) usable kitchens and bathrooms.

Requirement 1 begins by presenting criteria for determining when terrain or unusual site characteristics would make an accessible entrance impractical. HUD's final rules recognize that, for most building sites, the location of vehicular approaches and pedestrian ways would permit the provision of at least one building entrance on an accessible route without the construction of lengthy ramp systems or the provision of mechanical lifts. In enacting the Fair Housing Act, however, Congress was "sensitive to the possibility that certain natural terrain may pose unique building problems. For example, in areas which flood frequently, such as waterfronts or marshlands, housing may traditionally be built on stilts." Congress stated that it did not intend "to require that the accessibility requirements of this Act override the need to protect the physical integrity of multifamily housing that may be built on such sites." (House Report at 27.) As a result, § 100.205(a) of the final rule recognizes that certain sites may have characteristics that make it impractical to provide an accessible route to a multifamily dwelling. This section states that all covered multifamily dwellings shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. In those cases where it is impractical to provide an accessible route to a building entrance, the buildings are exempt from the requirements of § 100.205(c). SBCC and certain commenters addressed the issue of site impracticality. The commenters were concerned that the guideline establish enforceable criteria for determining when site conditions made accessibility impractical, so that buildings would be entitled to exemption from accessibility requirements only when actual site conditions at the entrance or entrances to an individual building so warranted.

The primary area of difference among commenters was in the desired criteria for determining site impracticality based on consideration of terrain. This is one of the most difficult issues involved in the task of establishing standards for accessibility under this Act. The Department recognizes the importance of establishing criteria that will provide a solid basis, during the design phase, for a developer's decisions about providing for accessibility. It is equally

vital that the results of applying the criteria can be assessed by the interested public, and by investigators reviewing complaints.

It is critical, therefore, that the Department have the benefit of thoughtful public consideration of these concerns during the comment period. HUD is particularly interested in comments on the relative merits of the site impracticality standards set out in options one and two. (More detailed descriptions of proposals may be secured by examining the public comments received on HUD's Advance Notice of the Guidelines, available for inspection in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.)

A particularly detailed recommendation was made by a voluntary task force consisting of representatives of the National Coordinating Council on Spinal Cord Injury (NCCSCI) and National Association of Home Builders (NAHB). These are described at option two. The NCCSCI/NAHB group proposed the following:

a. Covered multifamily dwellings with elevators would be required to comply with Fair Housing requirements regardless of site conditions or terrain, with all dwelling units on a floor served by an elevator designed to be adaptable and served by an accessible route.

b. In covered multifamily buildings without elevators, adaptable ground floor units would be provided in a percentage at least equal to the percentage of the total area of the undisturbed site having a natural grade with less than 10 percent slope, as determined by a method called a "slope analysis." At least 20 percent of ground floor units would be adaptable, regardless of site conditions, and any ground floor units served by an accessible route would be adaptable. NCCSCI/NAHB proposed that this "slope analysis" be certified by a licensed professional (e.g., a landscape architect or engineer), using a topographic survey with two-foot contour intervals. The NAHB/NCCSCI proposal also calls for any building on an accessible route to have an accessible entrance; however, it would permit the developer to decide whether to provide an accessible route. (For example, even though a building is on a gentle slope that could easily provide an accessible route, one or two steps could be incorporated into the walkway at the developer's discretion. This would exempt the building from accessibility requirements.)

The Southern Building Code Conference (SBCC) and other commenters suggested that impracticability should be based upon the difference in grade elevation between the entrance to the building and the closest parking lot or other vehicular approach—such as a passenger loading zone. SBCC recommended using a difference in elevation between entrance and parking resulting in a slope greater than 10 percent; other commenters suggested elevation differences between the building entrance and vehicular approach of greater than three to eight feet.

The Department would like comment on the following issues:

(1) Did Congress intend, in imposing the accessibility requirements of the Act, that each covered multifamily dwelling—each building—was to be evaluated individually? This methodology, if it is used alone, is limited to evaluating every site as a whole, and allows a developer to select which buildings on any site would be made accessible and which would not be accessible.

(2) Is the approach appropriate for a site with only one building, since the accessibility requirement applicable to a percentage of units would provide no relief for a single building on a site with extreme terrain?

(3) When a site has varied terrain, the suggested approach would permit developers to make some buildings inaccessible, even if all buildings were constructed on the level areas of the site. Is this appropriate?

The proposed option one guidelines represent a combination of the slope analysis and individual building analysis approaches. Sites with a single building would be judged by applying the individual building site analysis described below as step two.

For sites with more than one building, a two-step approach is proposed. The first step is a slope analysis to determine the percentage of the total area of the undisturbed site with a natural grade of 10 percent or less. The analysis would be done by a licensed professional (e.g., professional engineer) on a topographic survey map with two-foot contour intervals. Slope determinations would be made between each successive contour interval. This slope analysis would provide the basis for establishing a minimum percentage of ground floor dwelling units that would be required to comply with the Act.

On particularly difficult sites where 51 percent or more of the total area has slopes greater than 10 percent, the percentage of covered units expected to

comply would be equal to the percentage of the site with slopes of 10 percent or less. As the percentage of the site with slopes steeper than 10 percent decreases, the percentage of covered units expected to comply would increase to reflect the increased flexibility available. Thus, where 50 to 59 percent of the site has slopes of 10 percent or less, 75 percent of the covered units would be expected to comply; where slopes of 10 percent or less cover 60 to 69 percent of the site, 85 percent of covered units would be subject to the requirements. Sites with 70 percent or more of the area in slopes of 10 percent or less would be required to have 90 percent compliance.

(Application of the minimum percentage could result in an actual higher percentage of adaptable units, since all ground floor units in a building on an accessible route would be required to comply. Thus, if two units in a building with eight ground floor units were required to be adaptable in order to meet a 75 percent minimum, the remaining six ground floor units would also be required to comply.) The differential between percentage of area with slopes of 10 percent or less and the expected percentage of adaptable units is based on the expectation that buildings typically will be placed on less difficult areas of a site, making it likely that a higher proportion of buildings actually will be located in the areas with slopes of 10 percent or less.

The slope analysis is performed at the early stages of the development process, in preparation for planning the use of the site. By providing a means for the developer to estimate the number of adaptable units that will be required, the slope analysis enables the developer and the designer to make informed judgments about ultimate development costs and thus, to better assess the feasibility of development of that particular site. In addition, it establishes a minimum number of adaptable units that will be provided on a given site regardless of how the site is actually developed. In combination with the second step described below, it assures both that virtually every multibuilding site will provide some accessible buildings and that any building situated in such a way that it is practical to be made accessible, will be. For sites with more than one building, the second step is performed after site plans are completed and entails analysis of site conditions for each individual building. For sites with a single building, this is the only analysis performed. The site plan, with proposed locations of the buildings (locations which have been determined taking into consideration

density constraints, tree-save or wetlands ordinances and other factors impacting development choices), would be reviewed to ascertain the degree of slope (at finished grade and natural contour) between each building entrance and all specified pedestrian or vehicular arrival points. Buildings would be exempt only if the slopes of both original and finished grades exceed 10 percent at all of the measured points.

For example, a builder has acquired a site and plans to build fifteen separate nonelevator buildings housing condominiums on the site. There are ten ground-floor units per building for a total of 150 ground floor units. The builder applies the slope analysis required in step one, which indicates slopes of ten percent or less on 55 percent of the site. This would mean a minimum of 75 percent (112 units) of the ground floor units would be required to be adaptable. Later, once site plans are completed, the builder then applies the second step of the process to both the unfinished and finished grade. The second step results in required accessible entrances to thirteen of the fifteen buildings, meaning that 130 ground floor units must be adaptable. Assume, however, that the building plans happened to result in siting of the buildings in a manner which resulted in only ten buildings being required to be accessible (100 units) when the second step analysis was done. In this case, the builder would still be required to provide a minimum of 112 adaptable units. Therefore, the builder would be required to provide at least one accessible entrance to two additional buildings in order to be in compliance. One more building would not be sufficient, as that would amount to only 110 units; and because an accessible entrance is added to both of these additional buildings, all of the ground floor units in both buildings must comply. This results in a total of 120 units.

This two-step approach combines features of the major recommended methods proposed by commenters: The slope analysis method, to provide necessary planning information early in the development stage, as recommended by NCCSCI/NAHB, and the use of the 10% slope criterion at the individual building entrances, as recommended by SBCC. Noting that other commenters suggested that the vehicular approach to the entrance should be the point for determining the practicality of providing an accessible entrance, the Department considered other appropriate options in addition to the parking area suggested by SBCC. The resulting proposal

identifies specific arrival points to be considered in relation to each building entrance. These points would include sidewalks, streets, public transportation stops, passenger loading zones, and public and residential parking. Slope of the terrain would be considered between the entrance and each of the designated arrival points that is provided at the site.

This approach would result in accessibility for almost all covered units. The criteria proposed in the option one guidelines should result in more accessible units than the SBCC recommendation since the individual building analysis would provide for alternate routes to be made accessible where access to parking was found to be impractical, thus increasing the potential number of entrances required to be accessible.

One additional point should be noted. SBCC further suggested that the difference in grade elevation should first be examined for the undisturbed site and, if the differential exceeds the grade criterion, the grade elevation should be reexamined at the planned finish grade. HUD agrees. If an undisturbed site does not have extreme terrain at the planned location, it should not be exempt because development choices render the terrain impractical. Moreover if the undisturbed site has extreme terrain and the planned development (after taking into consideration the planned location of the building or buildings, density of the development, tree-save or wetlands ordinances, and other constraining factors) would result in a planned finish grade that would render an entrance easily made accessible, then accessibility should be required. The option one guidelines adopt this approach.

Based on these comments, the option one impracticality guidelines are as follows.

Terrain. In the first step, the minimum number of adaptable units would be determined initially by a slope analysis, with adaptable units to be provided on an incremental sliding scale determined by the percentage of total area of the site with slopes of 10 percent or less. This minimum number could increase where the building-by-building analysis in step two results in an accessible entrance to more buildings.

Accessibility to a building entrance would be considered to be impractical if: (1) The slope of the undisturbed site between the planned entrance and all the vehicular or pedestrian arrival points is greater than 10 percent; and (2) the slope of the planned finish grade between all of these points also exceeds 10 percent. Only one entrance is

required to be accessible to any one ground floor of a building, except in cases where each dwelling unit has a separate entrance. When a single building contains multiple dwellings each with separate entrances, each entrance would be considered individually for determining whether an accessible entrance was practical for a given dwelling unit. If access is found to be practical under this criterion, then one entrance to the dwelling unit would be expected to comply.

Unusual characteristics of the site. Sites with unusual characteristics include those located in a federally-designated floodplain or coastal high-hazard area, or sites subject to other similar requirements of law or code that the lowest floor or the lowest structural member of the first habitable floor must be raised to a specified level at or above the base flood elevation. If the first habitable floor must be raised more than 30 inches, resulting in a slope greater than 10 percent between the entrance and all vehicular or pedestrian access points to the entrance, an accessible route to the building entrance would be considered to be impractical.

In addition, an accessible entrance on an accessible route would be considered practical in any building in which an elevator connects the parking area with any floor on which dwelling units are located. In this situation, only those dwelling units on the accessible route would be expected to meet the requirements of the Fair Housing Act; units on floors not served by an elevator would not be expected to comply. Finally, an accessible entrance on an accessible route would be practical for any building where an elevated walkway is planned between a building entrance and a vehicular or pedestrian arrival point and the planned walkway has a slope no greater than 10 percent.

While the option one guidelines do not address placement of facilities including amenities on the site, developers are expected to make a good faith effort to ensure accessibility. The design of any project should begin with the expectation that all covered multifamily dwelling units and amenities will be accessible in accordance with the Fair Housing Act's requirements. Exemptions then will be determined on the basis of actual site conditions at the individual building.

As stated earlier in this preamble, there may be situations where the builder may apply the guidelines inappropriately, or misinterpret the guidelines, thus resulting in an inaccessible entrance or other areas which are not in compliance with the guidelines or the Fair Housing Act, as

amended. This may also be true in a builder's application of the site impracticality criteria. For example, if a builder inappropriately applies the site impracticality criteria and determines, through fault or error, that a building meet the criteria when it does not, noncompliance would result. The accessibility guidelines cannot guarantee that this kind of situation won't happen.

Following the provisions on site impracticality, Requirement 1 provides guidance on designing an accessible entrance on an accessible route, and states criteria for determining when access via a vehicular route would be acceptable. It is the Department's expectation that public and common use facilities would be on an accessible pedestrian route. However, where this is not practical, vehicular access could be provided. Thus, vehicular access would be an acceptable alternative where the slope of the finish grade between covered multifamily dwellings and a public or common use facility at the site (including parking) exceeds 8.33 percent, or where other physical barriers (natural or manmade) or legal restrictions, all of which are outside the control of the owner, prevent the installation of an accessible pedestrian route. A slope of 8.33 percent was chosen because it is the steepest slope which is accessible for a wheelchair user. Comment is invited on the appropriateness of the 8.33 percent criterion as opposed to the 10 percent criterion applied to initial tests of site impracticality.

Requirement 2 identifies components of public and common use areas that should be made accessible, references the section or sections of the ANSI Standard which apply in each case, and describes the appropriate application of the specifications. In some cases this section describes variations from the basic ANSI provision that is referenced. Dwellings meeting all of these requirements of the ANSI Standard for each applicable kind of public and common use area would be deemed to have met the requirements of § 100.205(c)(1).

The option one guidelines for Requirement 2 indicate specific examples of public and common use areas including parking and passenger loading zones; drinking fountains and water coolers; toilet rooms/bathing; facilities; places of assembly; spaces and facilities such as swimming pools, playgrounds, rental offices, lobbies, elevators, mailbox areas, lounges, halls, and corridors, and the like; and laundry rooms. Also provided is guidance on elements and features that are

components of accessible public and common use spaces, including accessible routes; parking, if provided; protruding objects; ground and floor surface treatments; curb ramps; ramps; stairs; elevators; platform lifts; and seating, tables, or work surfaces.

In describing the application of the accessible route provision in Requirement 2, the option one guidelines propose that on-grade walks or paths between separate buildings with covered multifamily dwellings should be accessible unless the slope of the finish grade exceeds 8.33 percent at any point along the route. The definition of "common use areas" enumerates "passageways among and between buildings" among the examples of common use areas. Passageways were included to ensure that routes between an accessible dwelling and other buildings on the site serving that dwelling (e.g., recreation centers) would be accessible. The definition of "building" includes a structure that contains or serves one or more dwelling units. Passageways were not enumerated in the definition of "common use areas" necessarily to require paths between buildings that contain dwelling units. However, the Department does propose that where a site plan includes such paths, and the finished grade would not exceed 8.33 percent, the path should be accessible. As discussed under the vehicular access route proposal above, the Department invites comment on the appropriateness of this use of 8.33 percent.

Requirement 3 sets out the option one guidelines of usable doors, with separate guidance for doors that are part of an accessible route in the public and common use areas of multifamily dwellings including entrance doors to individual dwelling units, and for doors within individual dwelling units. For the public and common use areas, doors which comply with ANSI 4.13 would meet the requirements of § 100.205(c)(2). For doors within individual dwelling units, part of the ANSI Standard (4.13.5) has been adopted to retain a required 32-inch clear width with the door open 90 degrees, measured between the face of the door and the stop.

The Department considered recommendations for allowing more narrow clear openings on doorways within dwelling units, coupled with correspondingly wider corridors approaching such doors. The 32-inch clear opening width has been the accepted standard for accessibility since the issuance of the original ANSI Standard in 1961. While it is possible to maneuver most wheelchairs through a

doorway with a slightly more narrow opening, such doors do not permit ready access on the constant-use basis that is the reality of daily living within a home environment. The necessity for perfect alignment that would be imposed by a more narrow doorway is not realistic to expect of a wheelchair user who goes in and out many times in the course of a day, often carrying objects. A narrower door is more likely to be damaged by frequent contact with the wheelchair, and the wheelchair user is more likely to scrape or injure knuckles in passing through the door. Therefore option one proposes that the 32-inch clear door opening should be maintained. This may be accomplished with a pocket (sliding) door or with a 34-inch door.

Research at Syracuse University on which the 1980 edition of the ANSI Standard was based supports this conclusion. Ten wheelchair users representing a wide variation of disabilities were tested on making a 90-degree turn through a doorway with 32-inch clear width. Six of the ten were either quadriplegic or had limited stamina. Seven of the ten subjects were able to turn through the 32-inch opening from a 36-inch wide corridor. The three remaining subjects were able to make the turn through a 34-inch clear opening. A 34-inch door could be adapted to provide a nominal 34-inch clear opening by mounting the door on offset hinges and removing the door stop up to the level of a moving wheelchair, or by enlarging the doorway to accept a 36-inch door. This is the type of modification which a tenant would be able to carry out under the "reasonable modification" provision of the Fair Housing Act. By allowing the use of standard-width hallways and doors smaller than 36 inches, while assuring that the minimum 36-inch hallway and 32-inch clear opening are provided, it should be possible to accommodate most people with disabilities and permit simple modifications for those who need more ample turning space, without requiring additional space within the unit.

By adhering to the standard 32-inch clear opening, the Department believes it is possible to forego other requirements related to doors that accessibility standards generally impose without compromising the Congressional directive requiring doors "sufficiently wide to allow passage by handicapped persons in wheelchairs." Therefore other ANSI requirements affecting doors—e.g., door closing forces, maneuvering clearances, hardware—are not referenced with respect to doors within dwelling units.

(Approaches to, and maneuvering spaces at, the exterior side of the entrance door would be considered part of the public spaces).

Requirement 4 sets out the option one guidelines for an accessible route into and through the covered dwelling unit. Doorways which are not intended to allow passage, such as into a linen closet, are not considered part of an accessible route since such a doorway is not designed to allow passage (House Report at 26). The accessible route generally requires only a minimum clear width of 36 inches; however, if a person in a wheelchair is required to make a T-turn, that is, to change direction in order to exit when it is not possible to back out of an area, then maneuvering space as illustrated in Fig. 2 of the option one guidelines would be needed. (This space may include a 32" clear opening at a doorway on one of the three legs of the "T".) Design features such as sunken living rooms or units with more than one floor would have to provide some means of access such as ramps, lifts or residential elevators. (The issue of providing accessibility to lofts and units with more than one floor is more fully addressed under section 4 of the option one guidelines above.)

The accessible route within the dwelling unit would connect with any exterior decks, balconies, patios or similar surfaces. Where these surfaces must be lower than the threshold for drainage purposes, a range of design options are possible. Patio surfaces may be sloped away from a caulked $\frac{3}{4}$ -inch threshold, for example, or the patio may incorporate a ramp. Balconies with drops exceeding $\frac{3}{4}$ -inch may have a deck surface installed over the balcony to bring the level flush with the entry while still allowing drainage through the slat or grid decking.

The question of providing access to balconies, patios, and similar amenities of a dwelling unit has been the subject of detailed consideration by the Department. The Department considers such amenities to be an integral part of the unit that should be included on the accessible route "into and through the covered dwelling unit." Recognizing that achieving this may require different design or construction approaches than is current standard practice, it is nevertheless believed that access can be achieved without significant additional costs and that, once the design problem is undertaken, methods will be developed that will reduce the cost further as they become standard practice.

Requirements 5 through 7 deal with required features of adaptive design within the individual dwelling unit.

Requirement 5 sets out the option one guidelines for light switches, electrical outlets, thermostats and other environmental controls in accessible locations. Congress noted that these provisions are not meant to increase the risk of danger to others or necessarily to require waist high controls (House Report at 27).

Requirement 6 sets out the option one guidelines for reinforced walls for grab bars. The guidelines depart from ANSI by allowing provision for a grab bar as short as 24 inches adjacent to the toilet. Where the toilet is not placed adjacent to a side wall, the bathroom would comply if provision was made for installation of floor mounted, foldaway or similar alternative grab bars. Like the shorter grab bar, this will allow greater design flexibility in placement of fixtures within the bathroom while maintaining accessibility. The Department emphasizes that this does not mean, in new construction, that grab bars must be installed, but rather that reinforcements be installed to allow the easy later installation of grab bars at a tenant's option and expense. Reinforcing for grab bars may be accomplished in a variety of ways, such as by providing plywood panels in the areas illustrated or by installing vertical reinforcement (in the form of double studs, for example) at the points noted on the figures.

Requirement 7 provides option one guidelines for usable kitchens and bathrooms. The provisions for kitchens and bathrooms are intended to provide a living environment usable by all without necessarily requiring an increase in "standard-sized" kitchens and bathrooms. The guidelines for kitchen space would result in a kitchen usable by handicapped persons, but would not require a wheelchair turning radius. In addition, these provisions do not require that fixtures, cabinetry or plumbing be designed to be adjustable (House Report at 27). HUD has followed standard usage and defined "bathrooms" as a full bathroom (that is, one having toilet, lavatory and bathtub or shower). Therefore the Guidelines only apply to full bathrooms, and would cover all such bathrooms in units with more than one bathroom.

II. Description of Option Two

The NCCSCI/NAHB recommendations to HUD were published in a report dated September 1989 entitled "Recommendations to the U.S. Department of Housing and Urban Development for Implementation of Handicapped Accessibility Provisions of the 1988 Fair Housing Amendments

Act." In most respects, the recommendations are the same as option one. Those provisions which differ affect only a portion of the option one guidelines entitled: "Section 5. Guidelines." The differences are itemized below.

Option: Requirement 1. Accessible Building Entrance on an Accessible Route

Paragraphs (1) through (6) of Requirement 1 of the HUD proposed "Section 5. Guidelines" would be replaced by the following provisions:

Site Guidelines: Impracticability due to Natural Terrain or Other Site Conditions

1. Covered multifamily dwellings with elevators shall be designed and constructed to provide at least one public entrance and accessible route serving the elevator lobby, regardless of the site conditions or terrain. Every dwelling unit on a floor served by an elevator shall be adaptable and shall be served by an accessible route.

2. In covered multifamily dwellings without elevators, the minimum percentage of adaptable ground floor units shall equal or exceed the percentage of the total area of the undisturbed site with a natural grade less than 10% in slope. The slope analysis shall be done on a topographic survey with 2 foot contour intervals with slope determination made between each successive contour interval. The slope analysis shall be certified by a professional licensed engineer, landscape architect, architect or surveyor. Regardless of natural terrain, however, at least 20% of the total ground floor units shall be adaptable in every case. All ground floor units served by an accessible route shall be adaptable.

3. In geographic areas where a minimum finished floor level for habitable space is established by legal constraints, based on environmental conditions such as flood plains, then non-elevator buildings or elevator buildings where codes do not permit elevator cabs and equipment below the minimum finished floor level need not be accessible if the vertical distance between the natural grade and the finished floor at every point on the perimeter of the building is in excess of 36".

Many of the differences between option one and two are described in the previous section. Two additional differences should be noted: First, this alternative would not exempt elevator buildings from accessibility requirements where site conditions made accessibility impractical; the option one guidelines would provide the same site impracticability considerations for elevator and non-elevator buildings. Second, this alternative would exempt buildings when environmental constraints such as flood plains required the first habitable floor level to be 36" above ground level; the option one guidelines use conditions exceeding a 30" height and 10 percent slope as the

criteria for impracticability.

Option: Requirement 2. Accessible and Usable Public and Common Use Areas

The option one guideline for this requirement is presented in chart form in this Notice. The NCCSCI/NAHB alternative would make the following changes to the "Application" column of the chart under accessible route(s) (item 1); parking and passenger loading zones (item 4); common use spaces and facilities (item 14) and laundry rooms (item 15):

Item 1. Accessible Route(s)

Handrails are not required on walkways. (The option one guidelines, like the ANSI Standard, require handrails when walks exceed a 5% slope; however, no handrails are required on walkways between buildings with covered dwelling units. Handrails would be required on accessible routes linking covered dwelling units with common and public use facilities.)

Item 4. Parking and passenger loading zones

1. An accessible route shall connect accessible parking facilities to entrances for all covered multifamily dwellings. In no event shall accessible routes (including curb ramps) be obstructed by a legally parked vehicle. To serve facilities with multiple accessible building entrances, required accessible parking spaces shall be dispersed and located near entrances.

2. The total number of permanently designated accessible parking spaces will be determined by State or local requirements.

3. Where no applicable State or local requirements exist, the following shall apply:

a. The required number of accessible parking spaces shall be determined by Table 1 below.

b. Where a range of parking facilities is offered to residents such as on-grade parking, protected surface parking, or parking in either individual or general parking structures, the required accessible spaces shall be proportionally dispersed.

Table 1: Required Accessible Parking (where local codes do not apply)

Total parking spaces in lot or garage	Required minimum number of accessible spaces
4 to 25.....	1
26 to 50.....	2
51 to 75.....	3
76 to 100.....	4
101 to 150.....	5
151 to 200.....	6
201 to 300.....	7
301 to 400.....	8
401 to 500.....	9
501 to 1000.....	(¹)
1000 to over.....	(²)

¹ Two percent (2%) of total.

² Twenty (20) plus one for each 100 over 1000. Table based on Uniform Federal Accessibility Standards (UFAS), 1986.

4. If all resident parking is provided within a structure, the garage shall be designed to allow limited access and parking for lift-equipped vans (minimum height 8'-0"). As a minimum, the number of van spaces shall be equal to 1% of the total number of dwelling units served.

5. Designated accessible parking spaces, located as close as practical to their individual dwelling unit, shall be provided to residents with disabilities upon request.

6. Each accessible parking space shall meet local or State requirements. Where applicable standards do not exist, each accessible space shall be a minimum of 8'-0" wide, served by an adjacent 5'-0" access aisle with a maximum slope of 5%. Adjoining accessible spaces may share a common access aisle. Lift-equipped van parking spaces, if provided, shall be a minimum of 8'-0" wide and served by an adjacent 8'-0" access aisle with a maximum slope of 5%.

The principal differences between alternatives for parking are that (1) the option one guidelines require that at least 2% of the covered units on a site are served by parking on an accessible route, while the NCCSCI/NAHB alternative requires an accessible route to parking for every accessible building; (2) the option one guidelines do not require a specific number of designated spaces, relying instead on a performance standard; NCCSCI/NAHB requires a specific number of designated spaces in every lot; (3) accessible van parking is required in garages when that is the only resident parking, under this alternative; the option one guidelines do not require parking for vans.

Item 14. Common-use spaces and facilities including swimming pools, playgrounds, entrances, rental offices, lobbies, elevators, mailbox areas, lounges, halls and corridors and the like

1. Recreational and common-use facilities shall be readily accessible and usable by residents and visitors with disabilities. Where multiple recreational facilities, such as tennis courts and pools, are provided, 25% or at least one of each type of facility shall be accessible provided that the accessible facilities have similar amenities to those that are not accessible.

2. All accessible swimming pools, except lap pools, shall provide access into the pool. Lap pools, hot tubs, and whirlpools shall be accessible only to the edge of the facility. Swimming pools (except lap pools) shall be served by steps and handrails.

3. Access to nature trails and jogging paths shall be provided unless it is impractical to do so. When the finished slope between a covered multifamily dwelling and jogging paths or trails materially exceeds 8.33% at any point or where other physical barriers or legal restrictions outside the control of the owner prevent the installation of an accessible route, access to the nature trail or jogging path is not required. Nature trails and jogging paths are not required to be accessible along their routes.

The alternatives differ in the following ways: (1) Instead of the specific requirement for 25% (or at least one) of recreational facilities to be accessible, the option one guidelines use a performance standard calling for sufficient accessible facilities to assure equitable use; (2) the option one guidelines do not address access into swimming pools (see discussion in the earlier section describing the option one guidelines); and (3) the option one guidelines call for access to all or a portion of nature and jogging trails where practical.

Item 15. Laundry rooms

Laundry Facilities serving multiple dwelling units shall include at least one washing machine and one dryer that are easily usable by a person in a wheelchair.

The option one guidelines call for an assistive device to be provided on request if front-loading washers are not provided.

Option: Requirement 3. Usable Doors

The option one guideline in Requirement 3 would be revised as follows for doorways within dwelling units:

1. The minimum clear width required for any door on an accessible route depends on the clear floor space available for maneuvering on both sides of the door opening. The minimum clear opening for all passage doors shall be 30" if the perpendicular approach to the door, in the closed position, is 3'4" or greater. The following chart indicates the minimum door width required for turning 90 degrees from the corridor/room through the doorway.

TABLE II: REQUIRED MANEUVERING SPACE AND MINIMUM DOOR WIDTH

Min. corridor/ room maneuvering width	Minimum door width (swinging)	Approximate clear opening
3'0"	2'10"	2'8"
3'4"	2'8"	2'6"
3'8"	2'6" ¹	2'5 1/4"

¹ Note: A 2'6" wide door is permitted only if a full 29 1/4" clear opening can be provided, for example, by use of door(s) swinging back a full 180 degrees against the wall (as in the case of a walk-in closet or pantry) or the use of "off-set" type hinges. Off-set type hinges can also be used to increase the clear opening of all doorways by approximately 1 1/4".

2. The entry door to at least one bedroom and the adaptable bathroom shall include a 1'6" wide clear space adjacent to the strike-side jamb on the pull side of the door. **Exception:** The entry door to bathrooms other than the adaptable bathroom need not include this 1'6" clear space. Bi-fold and bi-parting doors are also exempt from this requirement. However, all other requirements for these doors, such as minimum width and maneuvering space, shall be met.

The option one guidelines differs by (1) calling for a 32-inch clear opening for all doors intended for user passage and (2) not requiring the 18-inch clear space on the pull side of certain doors. Door clearances and maneuvering space are covered in more detail in the description of the option one guidelines.

Option: Requirement 4. Accessible Route into and Through the Dwelling Unit

Paragraphs (1) through (4) of Requirement 4 of the option one guideline for accessible routes would be modified to permit the following:

1. To minimize water damage, exterior balconies, patios, or paved spaces, if provided, may include a maximum 4" high step (or higher if required by local codes) between the floor level of the dwelling unit and the finished exterior surface. Unless otherwise provided by these guidelines, access through the unit shall not prohibit the use of commonly acceptable market designs within the dwelling unit involving changes in floor levels (e.g. sunken living rooms) provided that it is feasible for a resident to make reasonable modifications to make the space accessible.

2. Thresholds of 3/4" at exterior doors are permissible without beveled slopes.

3. Cased openings or other restricted passage points may have clear openings of 30" if maneuvering clearances required for doors with the same clear opening width are provided.

4. In elevator buildings, floors not served by an elevator need not comply with the requirements for an accessible route. Where the level served by the elevator does not have a full bathroom and/or kitchen, nothing in this section shall be interpreted to require these facilities.

The option one guidelines would differ from item (1) by limiting the change in level at exterior decks, balconies and patios to no more than 3/4 inch, and calling for some means of access to be provided where floor levels change within a unit. Also, the option one guidelines specify beveled edges for any threshold greater than 1/4-inch; the exception for exterior door thresholds recommended in item (2) is not proposed. With regard to item (3), the option one guidelines treat a cased opening as though it were a doorway; the same clear opening width is required. Finally, in contrast to item (4) of this alternative, the option one guidelines apply the requirement for an accessible route through the unit to all floors (including lofts, but not pull-down attic storage) of multi-level units in elevator buildings.

Option: Requirement 6. Reinforced Walls for Grab Bars

The option one guideline for Requirement 6 would be revised as follows:

1. Powder rooms would be covered as well as bathrooms. (In the option one guidelines, "bathroom" is defined as including a toilet, sink and bathtub or shower. Therefore, powder rooms are not covered by requirements for reinforced walls in bathrooms.)

2. Reinforcement in walls behind toilets would not be required. (The option one guidelines do specify it.)

3. The area for reinforcement would be reduced by 2 inches.

4. Prefabricated tub/shower enclosures would have to be fabricated with reinforcement for grab bars. (The option one guidelines have no special requirements for prefabricated enclosures.)

5. On a wall adjacent to a toilet, reinforcement would be required for 36 inches horizontally from the wall behind the toilet; if a door is located in the wall beside the toilet, the reinforcement would extend only to the door jamb. (In the option one guidelines, reinforcement would be provided, as a minimum, to a point 36 inches from the wall behind the toilet; this is a reduction of 18 inches from the ANSI requirement. The NAHB alternative has no minimum grab bar length.)

6. Toilets would have to be placed adjacent to a wall; the provision for alternative (e.g., foldaway) grab bars, provided in the proposed guideline, would be deleted.

7. Reinforcement would be required for later installation of shower seats in 36-inch shower stalls. (The option one guidelines do not cover reinforcement for shower seats; the Fair Housing Act requires only reinforcements for grab bars.)

Option: Requirement 7. Usable Kitchens and Bathrooms

The option one guideline (1) for usable kitchens would be revised as follows:

1. Clearances at range or cooktop and sink would not specify the need for a parallel approach. (The option one guidelines identify the differences between approaches at these locations and others where either parallel or forward approach is acceptable.)

2. U-shaped kitchens with any appliance or fixture located on the base of the "U" would need a 5-foot turning radius. (The option one guidelines permit a removable base cabinet under sinks or cooktops at that location in lieu of the 5-foot turning radius. Other fixtures could be located there without triggering either requirement.)

3. The provision for ranges or cooktops with controls placed so that it is not necessary to reach across burners would be deleted.

4. Pantries which require users to enter the closet could have doors with a clear opening of 29 1/4 inches.

The option one guideline (2) for usable bathrooms would be revised as follows:

1. In units with more than one bathroom, only one would be required to comply (as

opposed to all full bathrooms in the option one guidelines).

2. Distance from center line of toilets to adjacent vanity or lavatory would be reduced by 2 inches from the specification in the option one guidelines.

3. If both tub and shower are provided in a bathroom, only one would have to be accessible. If a bathroom has two sinks, only one would have to be accessible. (The option one guidelines propose access to at least one of each fixture provided; thus both tub and shower would have to be accessible.)

4. Clear floor space at bathtubs would have to be provided from the control (foot) wall for 48 inches of the tub length. (The option one guidelines would permit placement of a toilet adjacent to a tub at the control end, which could require a person in a wheelchair to transfer to the toilet seat in order to reach the controls.)

5. In all showers, the spray head and controls would be located on the side wall. (The option one guidelines permit placement of the spray head and controls on either back or side wall in 30-inch by 60-inch showers.)

III. Description of Option Three

This alternative approach would provide for "adaptable accommodations" for certain features in dwelling units in lieu of providing the corresponding adaptive features for all covered dwelling units at the time of construction. For example, if covered dwelling units in a building had sunken living rooms, rather than providing a means of access in each unit the owner/manager would have a portable ramp available on request by the tenant. This option would reduce costs for tenant who do not need special access, while ensuring that tenants who do need special access can adapt the unit however they choose. This option would also allow tenants with temporary disabilities or disabled visitors to adapt their units temporarily rather than permanently.

Changes that this alternative could make in the option one guidelines would be:

Option: Requirement 4: Accessible Route into and Through the Covered Dwelling Unit

Paragraph (3) of Requirement 4 would be revised by adding the following:

Where design features such as a sunken living room result in a change in level greater than 1/2-inch, an accessible route may be provided by use of a portable ramp or other means of access that is available on request from the housing management or ownership association.

Paragraph (4) of Requirement 4 would be revised by changing the second sentence to read:

Where exterior deck, balcony, patio or similar surfaces are more than 1/4 inch below the adjacent threshold, an accessible route

may be provided by use of a portable ramp, drop-in deck insert, or other means of access that is available on request from the housing management or ownership association.

Option: Requirement 7. Usable Kitchens and Bathrooms

Paragraph (1) of Requirement 7 would be revised to read:

Where ranges or cooktops have controls in a location that requires reaching across burners, the housing management or ownership association must provide, on request from a tenant with disabilities, a replacement range or cooktop with controls placed so that reaching across burners is not required.

Commenters may identify other features that the Department could consider including in this category.

Invitation to Comment on Proposed Rule Changes

The Department wants the accessibility guidelines to be meaningful for both the building industry and for the protected class of disabled persons. In order to assure that the guidelines are meaningful, the Department, during the continued development of the guidelines in their final form, will consider rulemaking to propose methods and policies to enforce the guidelines. As part of this enforcement approach, the Department wishes to provide developers, builders and designers with the maximum feasible certainty in their application of the guidelines before construction occurs. The Department also wishes to assure that there exists an effective enforcement mechanism which will allow investigators to process cases efficiently, rapidly and consistently.

To achieve this, the Department is considering regulatory amendments in two areas: (1) To require an annual survey to assess the number of projects developed with accessible buildings; (2) to establish mechanisms to assist enforcement efforts. These are discussed in more detail below.

An annual survey of new multifamily construction to estimate production of accessible buildings with adaptable units, could provide useful information for the Department in its future evaluation of the effectiveness of the Fair Housing regulations and the guidelines. The Department also intends to conduct studies of the cost of applying the final guidelines to multifamily construction. Information such as the results of the annual survey and the cost studies would be provided for consideration by the public in responding to any proposed revisions

that the Department might undertake as a result of its evaluations.

Also under consideration as an enforcement mechanism is an amendment to the Fair Housing Act regulations to establish record-keeping requirements to implement the guidelines and to clarify where the burden of proof would lie should a complaint be filed.

To make it possible for the builder to rely with some degree of confidence upon a situation where it would appear that an inaccessible building(s) was within the safe-harbor for impracticality, the Fair Housing Act regulation could be amended to require the builder to maintain records that demonstrate that in such cases a second opinion was secured from an independent, licensed architect or engineer who examined the site and the plans and found them to be within the guideline's safe-harbor requirements.

While a record of such an independent examination would not be a conclusive demonstration of compliance, it could provide builders and lenders with a degree of certainty and assist the Department in processing the complaint rapidly.

In this regard, the Department is inviting comments from the public on how it might amend its regulations to accomplish these goals.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10278, 451 Seventh Street, SW., Washington, DC 20410-0500.

The General Counsel, as the Designated Official under Executive Order No. 12606—The Family, has determined that this notice will likely have a significant impact on family formation, maintenance or well-being. Housing designed in accordance with the guidelines will offer more housing choices for families with members who have disabilities. Compliance with these guidelines may also increase the costs of developing a multifamily building and, thus, may increase the cost of renting or purchasing homes. Such costs could negatively effect families ability to obtain housing.

The General Counsel, as the Designated Official under section 6(a) of

Executive Order No. 12611—Federalism, has determined that this notice does not involve the preemption of State law by Federal statute or regulation and does not have federalism implications.

Pursuant to Executive Order 12291, a preliminary Regulatory Impact Analysis is being prepared by the Department. This analysis will be published in the Federal Register and also will be available in the Offices of HUD's Rules Docket Clerk at the address cited above. In the Federal Register publication, HUD will seek comment on the methodologies and data used in the preparation of the RIA.

With regard to the Regulatory Flexibility Act (5 U.S.C. 601), it is HUD's view that the proposed Fair Housing Accessibility Guidelines will have a sufficiently broad and widespread economic impact so as to warrant an Initial Regulatory Flexibility Analysis, and to elicit public comment on this aspect of the Department's action. Although the economic impact is significant, it is largely beneficial. Many costs incurred by builders and developers seeking to comply with the Fair Housing Act are unavoidable, and are not created or exacerbated by implementation of the Guidelines. To the contrary, by providing a uniform system of guidance, the Department may assist many businesses in reducing costs that might otherwise be expended in a 'confused' environment where of what constitutes acceptable compliance might not be clear with respect to certain elements in a project.

The guidelines affect builders and developers of multifamily dwellings, State and local governments, and tenants of multifamily dwellings—most particularly, handicapped individuals. In order to comply with the requirements of the Act, builders and developers would have to assure that common areas are accessible to handicapped individuals and that dwelling units contain certain features of adaptable design. Accordingly, the design of projects and dwelling units (including, for example, entrance areas, common areas, and rooms such as kitchens and bathrooms) would have to comply with minimum standards that assure that they are usable by persons with physical handicaps.

The Act provides, in part, that "the Secretary shall encourage, but may not require, States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with * * * [specific provisions of the Act

pertaining to design features of a dwelling unit]. Accordingly, the guidelines may also serve to provide States and units of local government with assistance in promulgating their own procedures.

In assessing the cost or benefit to small entities of compliance, it is first necessary to recognize certain fundamental characteristics of this program. Initially, compliance with the Act is a legal obligation imposed upon builders and developers. The obligation is firm, notwithstanding the size of a business entity (measured in dollar volume, employees or otherwise).

Second, compliance with the Act may well increase the costs associated with developing a multifamily dwelling. Although a number of States and localities already impose some accessibility requirements on new multifamily construction, only a few (e.g. California and New York) have requirements that are comparable in scope of coverage on the universe of units. Therefore, in many localities compliance with the Act will result in some additional cost. Principal elements affecting cost will be (a) incremental costs, if any, to provide accessibility to at least one building entrance and to amenities on the site; (b) cost of adding reinforcement to bathroom walls in order to permit residents to install grab bars if they choose (estimated cost in Washington D.C. suburban area: \$28 per bathroom); (c) possible additional cost for doors wider than the stock door sizes typically used in multifamily construction (about \$4 per door). Other requirements—such as location of light switches—will have no cost impact. Compliance should be achievable with minimal, if any, impact, on the size of units in multifamily projects.

To explore the actual impact, the Department conducted a project under which an architect in private practice was retained to adapt an actual multifamily unit design to the option one guidelines. The original (a two-bedroom, two-bath unit) and "adjusted" designs were then provided to a private cost estimating firm which contracted to estimate the difference in unit costs. The "adjusted" design was estimated to cost \$263 more per unit, required no increase in the size of the unit, and affected living space in the unit only to the extent of reducing one bedroom dimension by less than 2 inches. Based on this and studies from other sources, the major impact of the design and construction requirements will be the necessity to approach design of projects and individual units from the new

perspective of planning for accessibility from the outset.

Developers and project owners will benefit from compliance by increasing the pool of potential residents to include individuals and families who would be unable to live in inaccessible buildings. With the aging of the population, and the increase in incidence of disability that accompanies it, significant numbers of people will be able to remain in adaptable units as the aging process advances. Accessible building entrances also benefit parents with children in strollers and allow residents and visitors the convenience of using luggage or shopping carts easily.

Third, existing standards that provide guidance to builders and developers in this area, published by the American National Standards Institute, Inc. (ANSI), predate enactment of the Act and specify a level of accessibility within dwelling units that exceeds threshold levels of compliance intended by Congress under the Act.

Fourth, the Act prescribes a specific process for allowing a complainant to seek redress against a builder or developer that is alleged to have violated the Act. The provision of a uniform system of guidance in this area would provide a rational framework within which complaints could be assessed. At the same time, guidelines would not impose mandatory requirements on builders or developers.

The proposed guidelines do not mandate added recordkeeping or use of professional services. (The preamble does indicate, however, that HUD is contemplating requiring recordkeeping and the use of an 'independent' licensed professional to assess cases of site impracticality. However, HUD would pursue this idea through future notice and comment rulemaking.) Rather, the Guidelines provide technical assistance to builders and developers that would better enable them to comply with the Act. While not required to follow the guidelines, a builder may find them helpful in facilitating and accelerating its business functions. Because the guidelines are not mandatory, they do not inhibit a business's growth, innovation or exercise of discretion. On the other hand, the guidance provided could provide a significant measure of assurance to a developer seeking compliance with the Act.

It is the view of the Department that the guidelines would efficiently and effectively serve the purpose of assisting builders and developers to comply with the Act and the regulation. Ultimately, the Guidelines should prove far more beneficial than burdensome to businesses. The costs of compliance in

the absence of clear guidance (or of noncompliance) by a business is likely to be significantly greater.

Design Guidelines for Accessible/Adaptable Dwellings

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Section 1. Introduction

Background

These guidelines are recommended specifications that may be used to design accessible/adaptable dwelling units as required by the Fair Housing Act. Each guideline cites the appropriate paragraph of HUD's regulation at 24 CFR 100.205; quotes from the regulation to identify the required design features, and states recommended specifications for each design feature. Generally these guidelines rely on the American National Standards Institute (ANSI) A117.1-1986, *American National Standard for Buildings and Facilities—Providing Accessibility and Usability for Physically Handicapped People* (ANSI Standard).

Where the guidelines rely on sections of the ANSI Standard, the ANSI sections are cited. The texts of cited ANSI sections are not reproduced in the guidelines. (To assist in evaluating the proposed guidelines, however, the complete text of the ANSI Standard is printed as an appendix). For those guidelines that differ from the ANSI Standard, recommended specifications are provided.

Scope

These guidelines apply only to the design and construction requirements of 24 CFR 100.205. Compliance with these guidelines does not relieve persons participating in a Federal or federally assisted program or activity from other requirements, such as those required by section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the

Architectural Barriers Act of 1968 (42 U.S.C. 4151-57). Accessible design requirements for Section 504 are found at 24 CFR part 8 (1989). Accessible design requirements for the Architectural Barriers Act are found at 24 CFR part 40.

Section 2. Definitions

As used in these guidelines:

"Accessible," when used with respect to the public and common use areas of a building containing covered multifamily dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical handicaps. The phrase "readily accessible to and usable by" is synonymous with accessible. A public or common use area that complies with the appropriate requirements of ANSI A117.1-1986, a comparable standard or these guidelines is "accessible" within the meaning of this paragraph.

"Accessible route" means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps and lifts. A route that complies with the appropriate requirements of ANSI A117.1-1986, a comparable standard, or Section 5, Requirement 1 of these guidelines is an "accessible route". In the circumstances described in Section 5, Requirements 1 and 2, "accessible route" may include access via a vehicular route.

"ANSI A117.1-1986" means the 1986 edition of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people.

"Bathroom" means a bathroom which includes a toilet, sink, and bathtub or shower. It does not include single-fixture facilities or those with only a water closet and lavatory.

"Building" means a structure, facility or portion thereof that contains or serves one or more dwelling units.

"Building entrance on an accessible route" means an accessible entrance to a building that is connected by an accessible route to public transportation stops, to parking or passenger loading zones, or to public streets or sidewalks, if available. A building entrance that complies with ANSI A117.1-1986 (see section 5, Requirement 1 of these

guidelines) or a comparable standard complies with the requirements of this paragraph.

"Clear" means unobstructed.

"Common use areas" means rooms, spaces or elements inside or outside of a building that are made available for the use of residents of a building or the guests thereof. These areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, recreational areas and passageways among and between buildings. See section 5, Requirement 2 of these guidelines.

"Controlled substance" means any drug or other substance, or immediate precursor included in the definition in section 102 of the Controlled Substances Act (21 U.S.C. 802).

"Covered multifamily dwellings" or "covered multifamily dwellings subject to the Fair Housing Amendments" means buildings consisting of four or more dwelling units if such buildings have one or more elevators; and ground floor dwelling units in other buildings consisting of four or more dwelling units.

"Dwelling unit" means a single unit of residence for a family or one or more persons. Examples of dwelling units covered by these guidelines include: Condominiums; an apartment unit within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

"Entrance" means any access point to a building or portion of a building used by residents for the purpose of entering. For purposes of these guidelines, an "entrance" does not include a door to a loading dock or a door used primarily as a service entrance, even if nonhandicapped residents occasionally use that door to enter.

"Finish grade" means the ground surface of the site after all construction, levelling, grading, and development has been completed.

"Handicap" means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. This term does not include current, illegal use of or addiction to a controlled substance. For purposes of these guidelines, an individual shall not be considered to have a handicap solely because that individual is a transvestite. As used in this definition:

(a) "Physical or mental impairment" includes:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism. These guidelines are designed to make units accessible or adaptable for people with physical handicaps.

(b) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(c) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(d) "Is regarded as having an impairment" means:

(1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraph (a) of this definition but is treated by another person as having such an impairment.

"Public use areas" means interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

"Site" means a parcel of land bounded by a property line or a designated portion of a public right of way.

"Slope" means the relative steepness of the land between two points and is calculated as follows: The distance and elevation between the two points (e.g., an entrance and a passenger loading zone) are determined from a topographical map. The difference in elevation is divided by the distance and that fraction is multiplied by 100 to obtain a percentage slope figure. For example, if a principal entrance is ten feet from a passenger loading zone, and the principal entrance is raised one foot higher than the passenger loading zone, then the slope is $1/10 \times 100 = 10\%$.

"T-turn" means a 180-degree turn made in a T-shaped space. See figure 2 in section 5, Requirement 4.

"Undisturbed site" means the site prior to any construction, levelling, grading, or development, regardless of whether such construction, levelling, grading, or development was done by the housing provider or its agent.

"Vehicular or pedestrian arrival points" means public or resident parking areas, public transportation stops, passenger loading zones, and public streets or sidewalks.

"Vehicular route" means a route intended for vehicular traffic, such as a street, driveway or parking lot.

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Section 3. Fair Housing Act Design and Construction Requirements

The regulations issued by the Department at 24 CFR 100.205 state:

§ 100.205 Design and construction requirements.

(a) Covered multifamily dwellings for first occupancy after March 13, 1991 shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. For purposes of this section, a covered multifamily dwelling shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991 if they are occupied by that date or if the last building permit or renewal thereof for the covered multifamily dwellings is issued by a State, County or local government on or before January 13, 1990. The burden of establishing impracticality because of terrain or unusual site characteristics is on the person or persons who designed or constructed the housing facility.

(b) The application of paragraph (a) of this section may be illustrated by the following examples:

Example (1): A real estate developer plans to construct six covered multifamily dwelling units on a site with a hilly terrain. Because of the terrain, it will be necessary to climb a long and steep stairway in order to enter the dwellings. Since there is no practical way to provide an accessible route to any of the dwellings, one need not be provided.

Example (2): A real estate developer plans to construct a building consisting of 10 units of multifamily housing on a waterfront site that floods frequently. Because of this unusual characteristic of the site, the builder plans to construct the building on stilts. It is customary for housing in the geographic area where the site is located to be built on stilts. The housing may lawfully be constructed on the proposed site on stilts even though this means that there will be no practical way to provide an accessible route to the building entrance.

Example (3): A real estate developer plans to construct a multifamily housing facility on a particular site. The developer would like the facility to be built on the site to contain as many units as possible. Because of the configuration and terrain of the site, it is possible to construct a building with 105 units on the site provided the site does not have an accessible route leading to the building entrance. It is also possible to construct a building on the site with an accessible route

leading to the building entrance. However, such a building would have no more than 100 dwelling units. The building to be constructed on the site must have a building entrance on an accessible route because it is not impractical to provide such an entrance because of the terrain or unusual characteristics of the site.

(c) All covered multifamily dwellings for first occupancy after March 13, 1991 with a building entrance on an accessible route shall be designed and constructed in such a manner that—

(1) The public and common use areas are readily accessible to and usable by handicapped persons;

(2) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(3) All premises within covered multifamily dwelling units contain the following features of adaptable design:

(i) An accessible route into and through the covered dwelling unit;

(ii) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(iii) Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower, stall and shower seat, where such facilities are provided; and

(iv) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(d) The application of paragraph (c) of this section may be illustrated by the following examples:

Example (1): A developer plans to construct a 100 unit condominium apartment building with one elevator. In accordance with paragraph (a), the building has at least one accessible route leading to an accessible entrance. All 100 units are covered multifamily dwelling units and they all must be designed and constructed so that they comply with the accessibility requirements of paragraph (c) of this section.

Example (2): A developer plans to construct 30 garden apartments in a three story building. The building will not have an elevator. The building will have one accessible entrance which will be on the first floor. Since the building does not have an elevator, only the "ground floor" units are covered multifamily units. The "ground floor" is the first floor because that is the floor that has an accessible entrance. All of the dwelling units on the first floor must meet the accessibility requirements of paragraph (c) of this section and must have access to at least one of each type of public or common use area available for residents in the building.

(e) Compliance with the appropriate requirements of ANSI A117.1-1986 suffices to satisfy the requirements of paragraph (c)(3) of this section.

(f) Compliance with a duly enacted law of a State or unit of general local government that includes the requirements of paragraphs (a) and (c) of this section satisfies the requirements of paragraphs (a) and (c) of this section.

(g)(1) It is the policy of HUD to encourage States and units of general local government to include, in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraphs (a) and (c) of this section.

(2) A State or unit of general local government may review and approve newly constructed multifamily dwellings for the purpose of making determinations as to whether the requirements of paragraphs (a) and (c) of this section are met.

(h) Determinations of compliance or noncompliance by a State or a unit of general local government under

paragraph (f) or (g) of this section are not conclusive in enforcement proceedings under the Fair Housing Amendments Act.

(i) This subpart does not invalidate or limit any law of a State or political subdivision of a State that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subpart.

Section 4. Application of the Guidelines

The following specifications apply to new construction of covered multifamily dwellings (see Definitions). These guidelines are recommended for design of dwellings that are accessible or adaptable for people with physical handicaps.

Section 5. Guidelines

Requirement 1. Accessible building entrance on an accessible route.

Under § 100.205(a) covered multifamily dwellings shall be designed and constructed to have at least one building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual characteristics of the site.

Guideline

(1) Single building on a site:

(a) When the ground floor units of a building have separate entrances, each ground floor unit shall be served by an accessible route, except for any unit where the terrain or unusual characteristics of the site prohibit the provision of an accessible route to the entrance of that unit.

(b) When a building has one or more common entrances, at least one entrance that is connected by an accessible route to all covered units within the building shall be served by an accessible route. Only when the terrain or unusual characteristics of the site would prohibit the provision of an accessible route to all such entrances would the building be exempt from providing an accessible entrance.

(2) More than one building on a site:

(a) Step one: Slope analysis of site. A minimum number of covered units to be made accessible can be determined by performing a slope analysis of the entire undisturbed site, using a topographic survey with two-foot contour intervals and measuring the slope between each successive contour. The number of adaptable units would be an acceptable minimum if the following ratios were met:

Percent of area with slopes of 10 percent or less	Minimum percent of adaptable units expected
Less than 50	Equal percentage.
50 to 59	75.
60 to 69	85.
70 to 89	90.
90 or more	Equal percentage.

(b) Step two: Individual building analysis. Notwithstanding the results of the Step One analysis, each building on a site shall have at least one building entrance on an accessible route unless prohibited by the terrain or unusual characteristics of the site.

(3) Terrain:

It is impractical to provide an accessible entrance served by an accessible route when the terrain of the site is such that:

(a) the slopes of the undisturbed site between the planned entrance and all vehicular or pedestrian arrival points exceeds 10 percent; and

(b) the slopes of the planned finish grade between the entrance and all of those points exceeds 10 percent.

For purposes of these guidelines, vehicular or pedestrian arrival points include public or resident parking areas; public transportation stops; passenger loading zones; and public streets or sidewalks. The slope would be measured at ground level from the point of the planned entrance on a straight line to the closest point of the vehicular or pedestrian arrival point (in the case of sidewalks, the closest point to the entrance where a public sidewalk entering the site intersects with another sidewalk).

(4) Unusual characteristics of the site:

Sites with unusual site characteristics include sites located in a federally-designated floodplain or coastal high-hazard area and sites subject to other similar requirements of law or code that the lowest floor or the lowest structural member of the lowest floor must be raised to a specified level at or above the base flood elevation. If the unusual site characteristics result in a difference in grade elevation exceeding 30 inches and 10 percent between an entrance and all vehicular or pedestrian arrival points, an accessible route to that building entrance would be impractical.

(5) Buildings with elevators connecting parking areas and dwelling units:

Regardless of site considerations described in parts (1), (2), (3) and (4), an accessible entrance on an accessible route is practical when there is an elevator connecting the parking area with any floor on which dwelling units are located. (In this case, those dwelling units on a floor(s) served by an elevator, and at least one of each type of public and common use areas, would be subject to the guidelines.)

(6) Planned elevated walkway:

Regardless of site considerations described in parts (1), (2), (3) and (4), an entrance on an accessible route is practical when an elevated walkway is planned between a building entrance and a vehicular or pedestrian arrival point and the planned walkway has a slope no greater than 10 percent.

(7) Accessible entrance:

An entrance that complies with ANSI 4.14 meets section 100.205(a).

(8) Accessible route:

An accessible route that complies with ANSI 4.3 would meet § 100.205(a). If the slope of the finish grade between covered multifamily dwellings and a public or common use facility (including parking) exceeds 8.33%, or where other physical barriers (natural or manmade) or legal restrictions, all of which are outside the control of the owner, prevent the installation of an accessible pedestrian route, an acceptable alternative is to provide access via a vehicular route, so long as necessary site provisions such as parking spaces and curb ramps are provided at the public or common use facility.

Requirement 2. Accessible and usable public and common use areas.

Section 100.205(c)(1) provides that covered multifamily dwellings with a building entrance on an accessible route shall be designed in such a manner that the public and common use areas are readily accessible to and usable by handicapped persons.

Guideline: The following chart identifies the public and common use areas that should be made accessible, cites the appropriate section of the ANSI Standard, and describes the appropriate application of the specifications, including modifications to the referenced Standard.

BASIC COMPONENTS FOR ACCESSIBLE AND USABLE PUBLIC AND COMMON USE AREAS OR FACILITIES

Accessible element or space	ANSI A117.1 section	Application
1. Accessible route(s)	4.3	<p>Within the boundary of the site:</p> <p>(a) From public transportation stops, accessible parking spaces, accessible passenger loading zones, and public streets or sidewalks to accessible building entrances (subject to site considerations described in section 5).</p> <p>(b) Connecting accessible buildings, facilities, elements and spaces that are on the same site. On-grade walks or paths between separate buildings with covered multifamily dwellings, while not required, should be accessible unless the slope of finish grade exceeds 8.33% at any point along the route. Handrails are not required on these accessible walks.</p> <p>(c) Connecting accessible building or facility entrances with accessible spaces and elements within the building or facility, including adaptable dwelling units.</p> <p>(d) Where site or legal constraints prevent a route accessible to wheelchair users between covered multifamily dwellings and public or common-use facilities elsewhere on the site, an acceptable alternative is the provision of access via a vehicular route so long as there is accessible parking on an accessible route to at least 2% of covered dwelling units, and necessary site provisions such as parking and curb cuts are available at the public or common use facility.</p>
2. Protruding objects	4.4	Accessible routes or maneuvering space including, but not limited to halls, corridors, passageways, or aisles.
3. Ground and floor surface treatments	4.5	Accessible routes, rooms, and spaces, including floors, walks, ramps, stairs, and curb ramps.
4. Parking and passenger-loading zones	4.6	If provided at the site, designated accessible parking at the dwelling unit on request of residents with handicaps, on the same terms and with the full range of choices (e.g., surface parking or garage) that are provided for other residents of the project, with accessible parking on a route accessible to wheelchairs for at least 2% of the covered dwelling units; accessible visitor parking sufficient to provide access to grade-level entrances of covered multifamily dwellings; and accessible parking at facilities (e.g., swimming pools) that serve accessible buildings.
5. Curb ramps	4.7	Accessible routes crossing curbs.
6. Ramps	4.8	Accessible routes with slopes greater than 1:20.
7. Stairs	4.9	Stairs on accessible routes connecting levels not connected by an elevator.
8. Elevator	4.10	If provided.
9. Platform lift	4.11	May be used in lieu of an elevator or ramp under certain conditions.
10. Drinking fountains and water coolers	4.15	Fifty percent of fountains and coolers on each floor, or at least one, if provided in the facility or at the site.
11. Toilet rooms and bathing facilities including water closets, toilet rooms and stalls, urinals, lavatories and mirrors, bathtubs, shower stalls, and sinks	4.22	Where provided in public-use and common-use facilities, at least one of each fixture provided per room.
12. Seating, tables, or work surfaces	4.30	If provided in accessible spaces, at least one of each type provided.
13. Places of assembly	4.31	If provided in the facility or at the site:
14. Common-use spaces and facilities including swimming pools, playgrounds, entrances, rental offices, lobbies, elevators, mailbox areas, lounges, halls and corridors, and the like	4.1 through 4.30	<p>(a) Where multiple recreational facilities (e.g., tennis courts) are provided sufficient accessible facilities of each type to assure equitable opportunity for use by persons with handicaps.</p> <p>(b) Where practical, access to all or a portion of nature trails and jogging paths.</p>
15. Laundry rooms	4.32.6	If provided in the facility or at the site, at least one of each type of appliance provided in each laundry area, except that laundry rooms serving covered multifamily dwellings would not be required to have front-loading washers in order to meet the requirements of § 100.205(c)(1). (Where front loading washers are not provided, management will be expected to provide assistive devices on request if necessary to permit a resident to use a top loading washer.)

Requirement 3. Usable doors.

Section 100.205(c)(2) provides that covered multifamily dwellings with a building entrance on an accessible route shall be designed in such a manner that all the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs.

Guideline: Section 100.205(c)(2) would

apply to doors that are part of an accessible route in the public and common use areas of multifamily dwellings and to doors into and within individual dwelling units.

On accessible routes in public and common use areas, and for primary entrance doors to covered units, doors that comply with ANSI 4.13 would meet this requirement.

Within individual dwelling units,

doors intended for user passage through the unit which have a minimum clear opening of 32 inches with the door open 90 degrees, measured between the face of the door and the stop (see Fig. 1(a), (b), and (c)) would meet this requirement. Openings more than 24 inches in depth (see Fig. 1 (d)) are not considered doorways.

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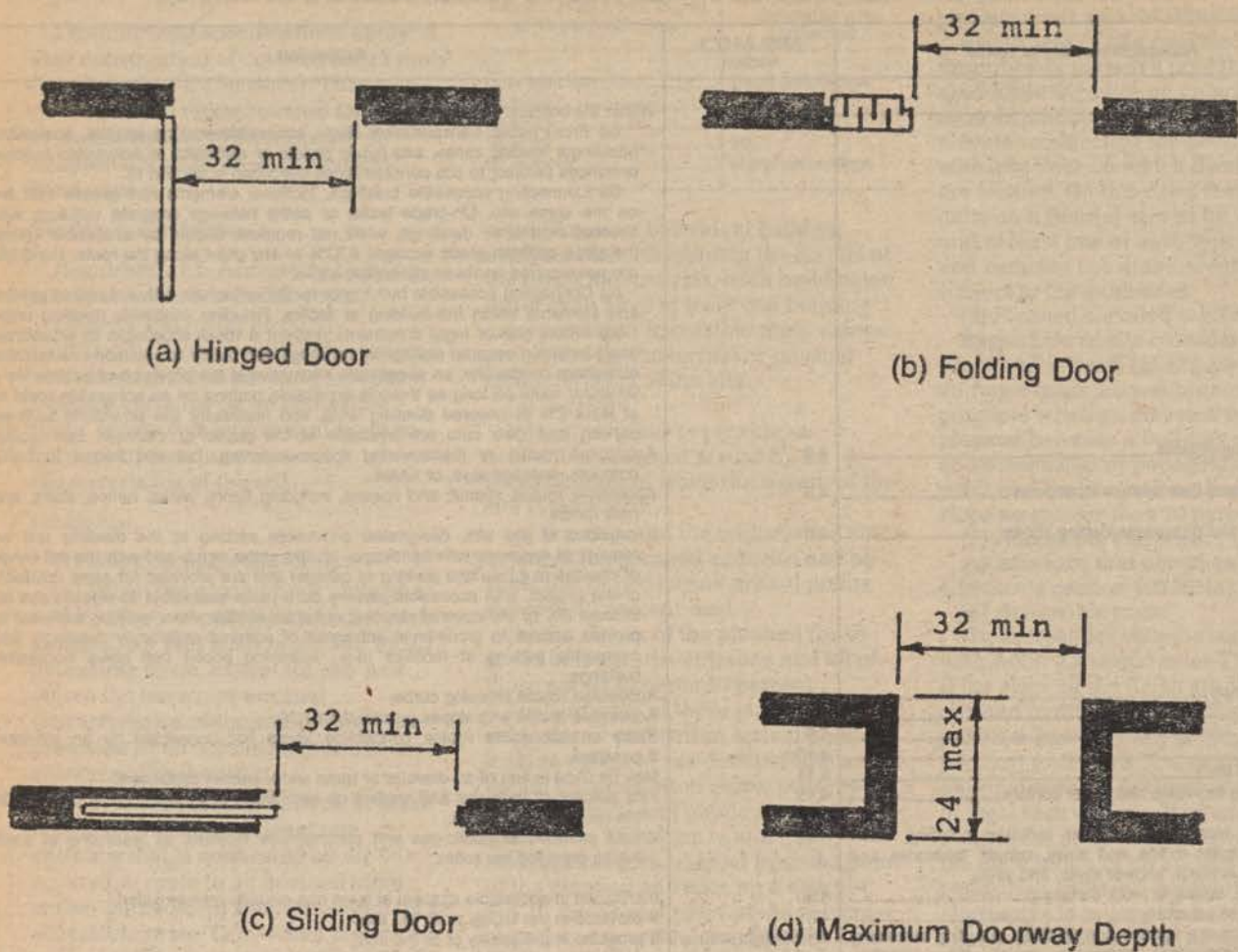


Fig. 1 Clear Doorway Width and Depth

Requirement 4. Accessible route into and through the covered dwelling unit.

Section 100.205(c)(3)(i) provides that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that all premises within covered multifamily dwelling units contain an accessible route into and through the covered dwelling unit.

Guideline: Accessible routes into and through dwelling units would meet § 100.205(c)(3)(i) if:

(1) A minimum clear width of 36 inches is provided; if a person in a wheelchair must make a T-turn, maneuvering space is provided as shown in Fig. 2.

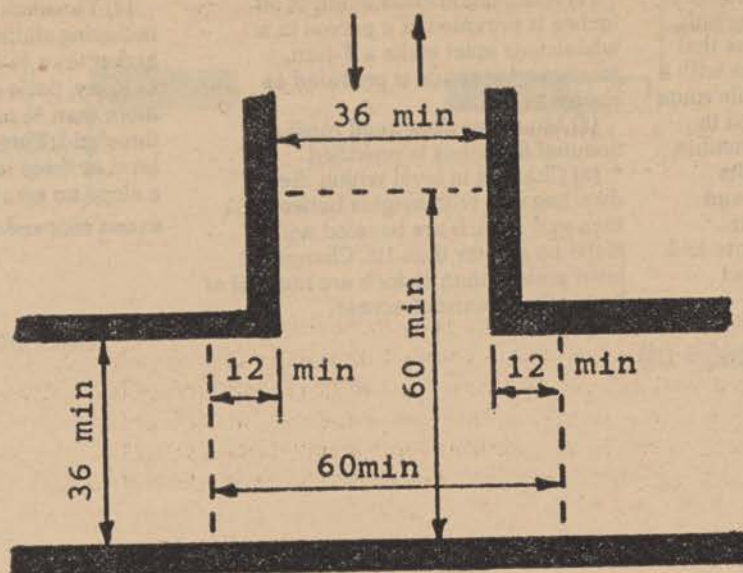
(2) Minimum clear head room of nominal 80 inches is provided.

(3) Changes in level within the dwelling unit with heights between $\frac{1}{4}$ inch and $\frac{1}{2}$ inch are beveled with a slope no greater than 1:2. Changes in level greater than $\frac{1}{2}$ inch are ramped or have other means of access.

(4) Thresholds at exterior doors, including sliding door tracks, are no higher than $\frac{1}{4}$ inch. Exterior deck, balcony, patio or similar surfaces are no more than $\frac{1}{4}$ inch below the adjacent threshold. Thresholds and changes in level at these locations are beveled with a slope no greater than 1:2.

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Fig. 2. T-Shaped Space for 180° Turn



NOTE: Dashed lines indicate minimum length of clear space required on each arm of the T-shaped space in order to complete the turn.

Fig. 2 T-Shaped Space for 180° Turn

Requirement 5. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.

Section 100.205(c)(3)(ii) requires that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that all premises within covered multifamily dwelling units

contain light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.

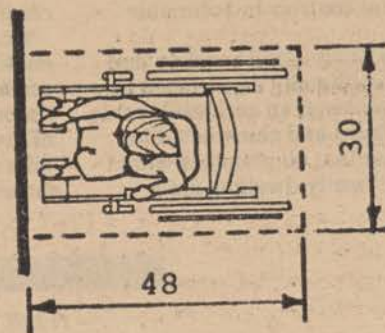
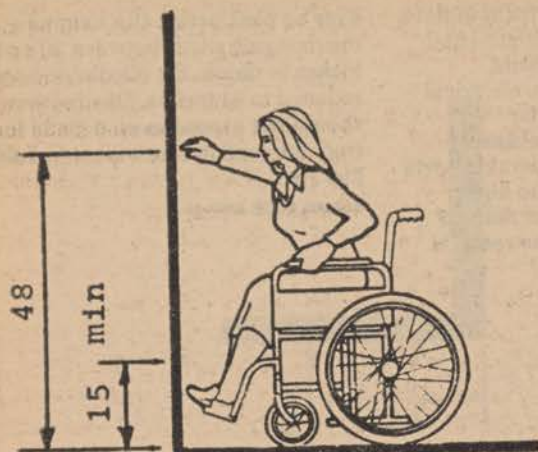
Guideline. Light switches, electrical outlets, thermostats and other environmental controls would meet section 100.205(c)(3)(ii) if operable parts of the controls are located no higher than 48 inches, and no lower than 15 inches, above the floor. If the reach is

over an obstruction (for example, an overhanging shelf) between 20 and 25 inches in depth, the maximum height is reduced to 44 inches. Obstructions should not extend more than 25 inches from the wall beneath a control. (See Fig. 3.)

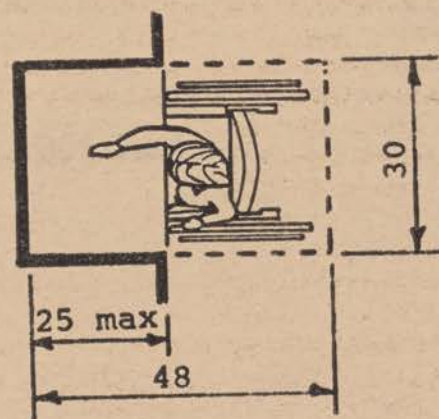
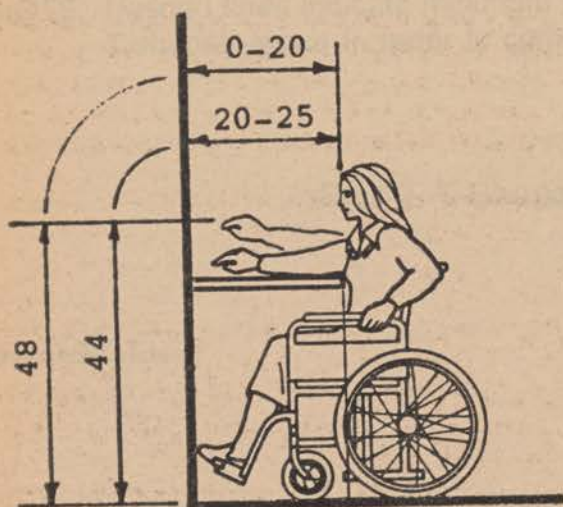
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Fig. 3 Forward Reach



(a) Forward Reach Limit



NOTE: Clear knee space should be as deep as the reach distance.

(b) Maximum Forward Reach Over an Obstruction

Fig. 3 Forward Reach

Requirement 6. Reinforced walls for grab bars.

Section 100.205(c)(3)(iii) requires that covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that all premises within covered multifamily dwelling units contain reinforcements in bathroom

walls to allow later installation of grab bars around the toilet, tub, shower stall and shower seat, where such facilities are provided.

Guideline: Reinforced bathroom walls to allow later installation of grab bars around the toilet, tub, shower stall and shower seat, where such facilities are provided, would meet § 100.205(c)(3)(iii)

if reinforced areas are provided at points where grab bars will be mounted (for example, see Figs. 4, 5 and 6 below). Where the toilet is not placed adjacent to a side wall, the bathroom would comply if provision was made for installation of floor mounted, foldaway or similar alternative grab bars.

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Fig. 4 Water Closets in Accessible Bathrooms

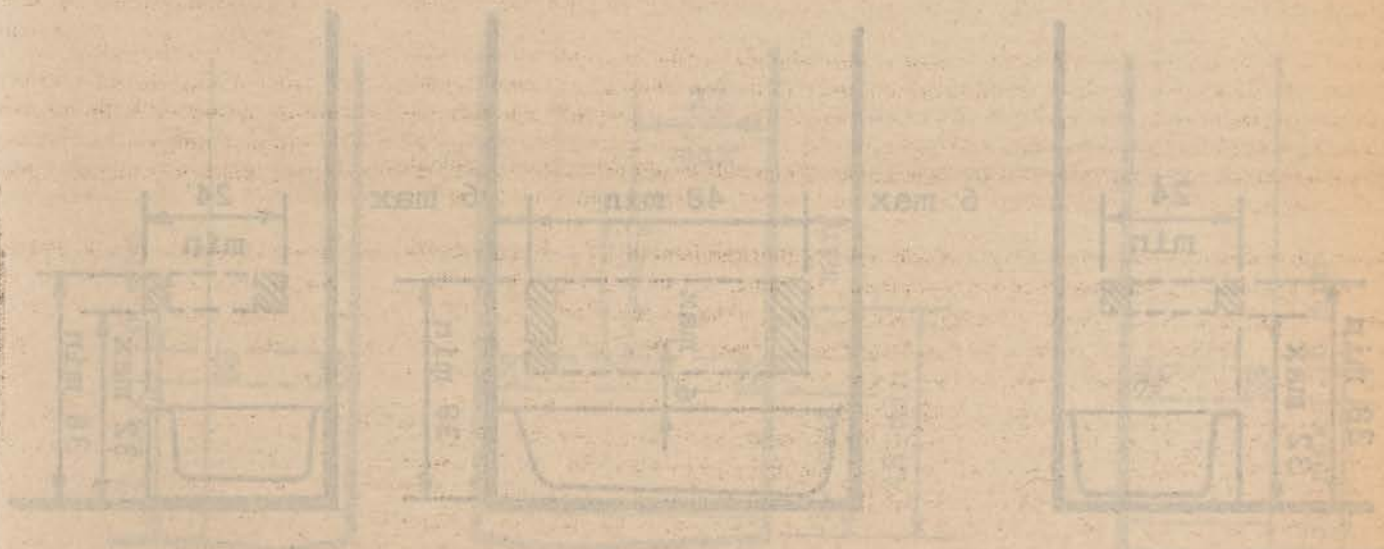
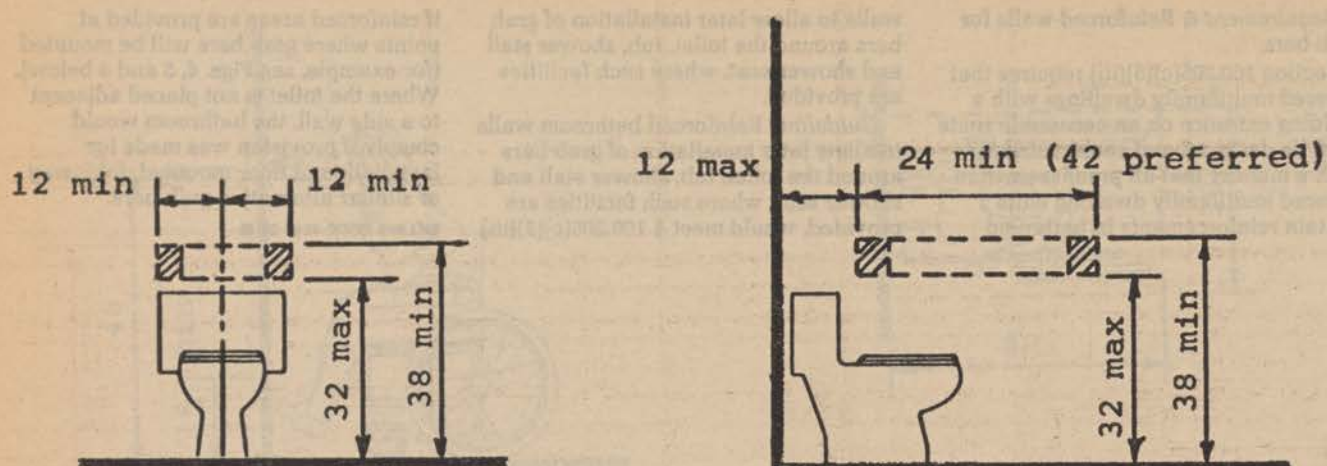


Fig. 5 Location of Grab Bar Reinforcements for Accessible Bathrooms

NOTE: The areas outlined in dashed lines represent locations for future installation of grab bars. Reinforcing is needed at shaded areas of walls to mount grab bars.



Reinforced Areas for Installation
of Grab Bars

Fig. 4 Water Closets in Adaptable Bathrooms

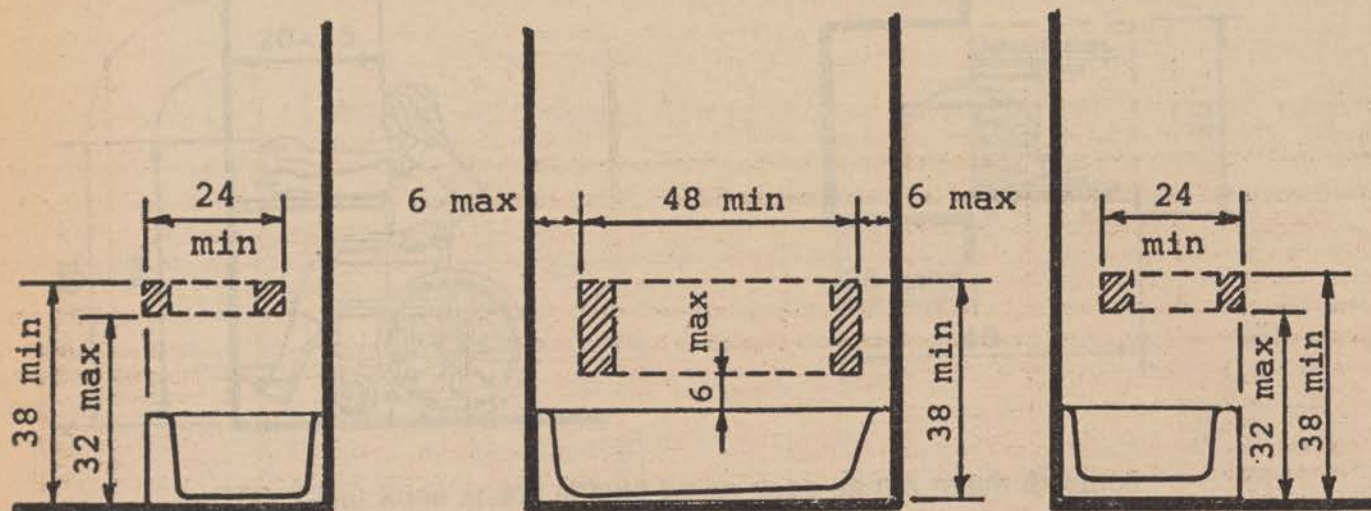
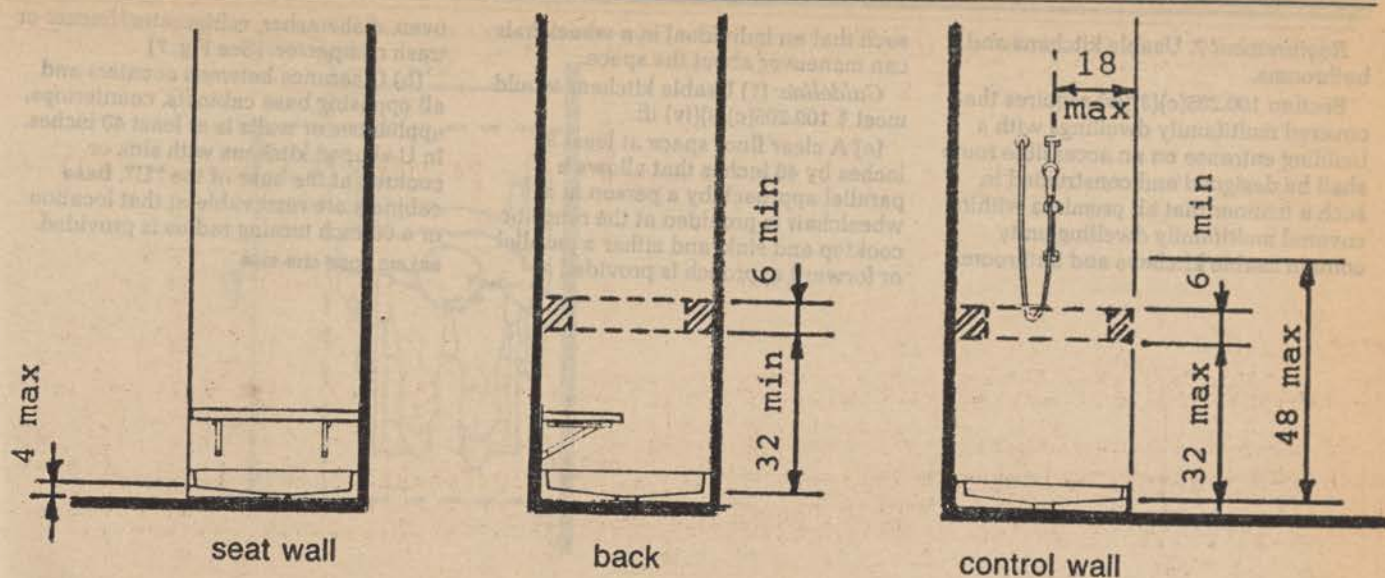
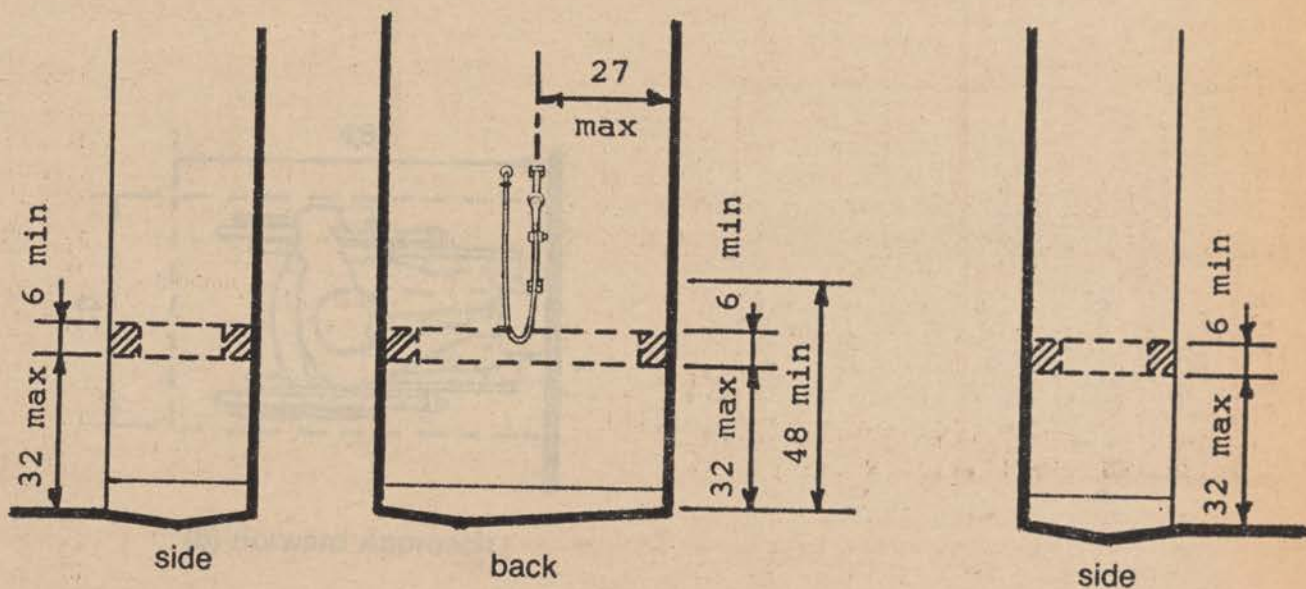


Fig. 5 Location of Grab Bar Reinforcements for
Adaptable Bathtubs

NOTE: The areas outlined in dashed lines represent locations for future installation of grab bars; reinforcing is needed at shaded ends of each area to mount grab bars.



(a) 36-in by 36-in Stall



(b) 30-in by 60-in Stall

Fig. 6 Location of Grab Bar Reinforcements for Adaptable Showers

NOTES: (1) The areas outlined in dashed lines represent locations for future installation of grab bars; reinforcing is needed at ends of each area to mount grab bars.

(2) In Fig. 6(b), shower head and control area may be on back wall (as shown) or on either side.

Requirement 7. Usable kitchens and bathrooms.

Section 100.205(c)(3)(iv) requires that covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that all premises within covered multifamily dwelling units contain usable kitchens and bathrooms

such that an individual in a wheelchair can maneuver about the space.

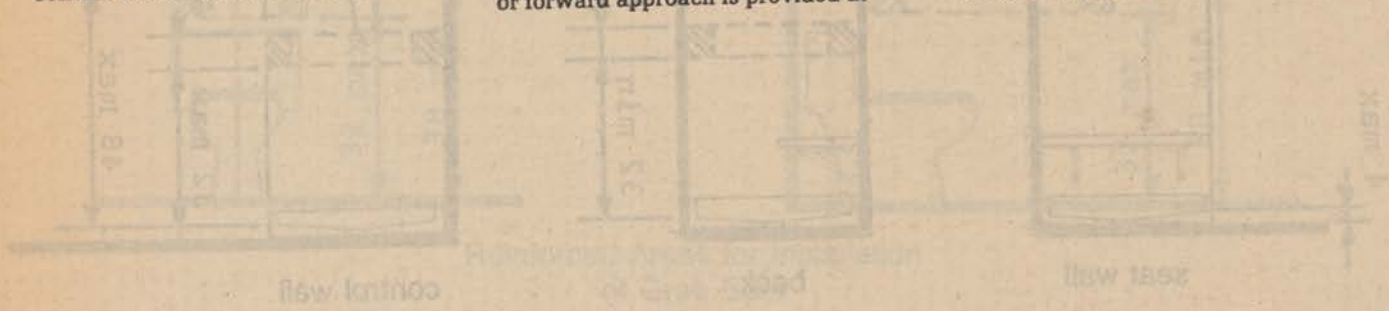
Guideline: (1) Usable kitchens would meet § 100.205(c)(3)(iv) if:

(a) A clear floor space at least 30 inches by 48 inches that allows a parallel approach by a person in a wheelchair is provided at the range or cooktop and sink, and either a parallel or forward approach is provided at

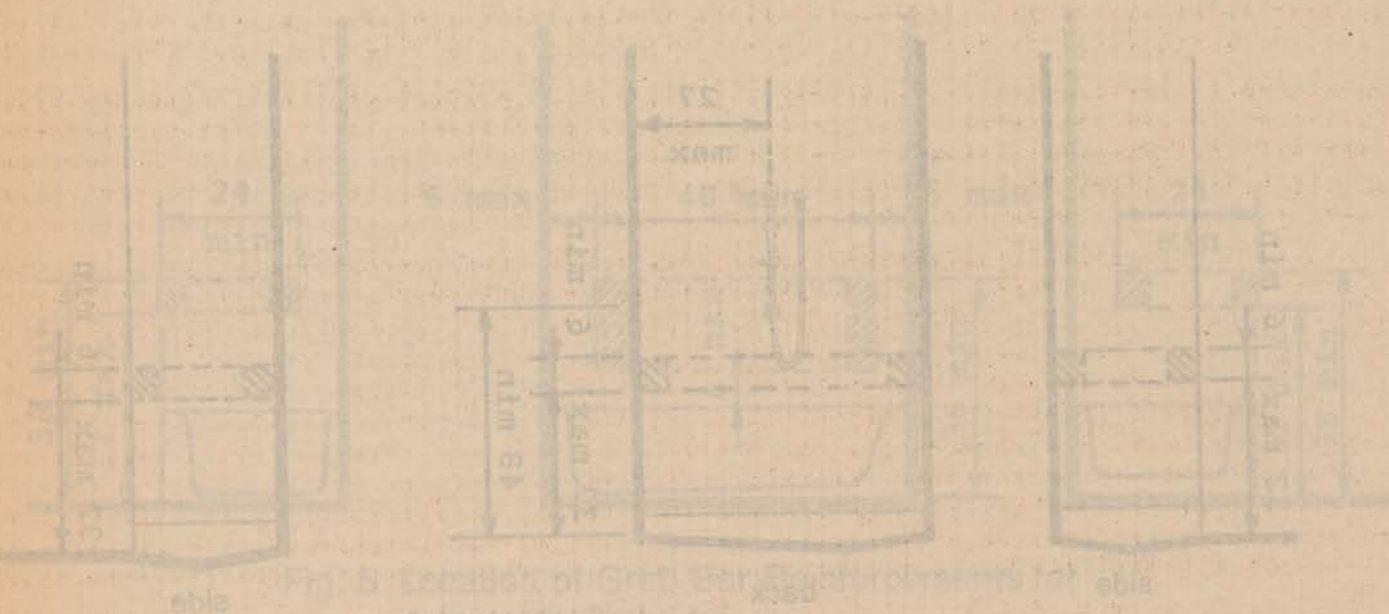
oven, dishwasher, refrigerator/freezer or trash compactor. (See Fig. 7)

(b) Clearance between counters and all opposing base cabinets, countertops, appliances or walls is at least 40 inches. In U-shaped kitchens with sink or cooktop at the base of the "U", base cabinets are removable at that location or a 60-inch turning radius is provided.

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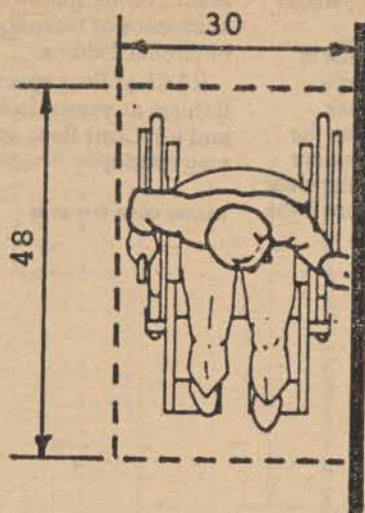
(a) 30-in. by 48-in. Clear Floor Space



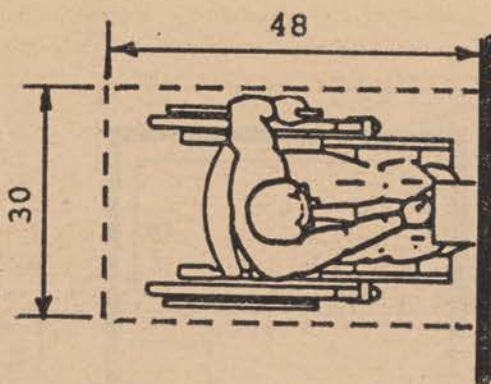
(b) 30-in. by 48-in. Clear Floor Space

NOTES: (1) The areas outlined in dashed lines represent locations for future installation of grab bars; reinforcing is needed at ends of such areas to mount grab bars. (2) In Fig. 5(b), shower head and control area may be on back wall (as shown) or on either side.

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(a) Parallel Approach



(b) Forward Approach

Fig. 7 Minimum Clear Floor Space for Wheelchairs

(c) Controls for ranges and cooktops are placed so that reaching across burners is not required.

(2) Usable bathrooms

Section 100.205(c)(3)(iv) applies to bathrooms as defined in these guidelines (i.e., a bathroom which includes a toilet, lavatory and bathtub or shower).
Bathrooms that have reinforced walls

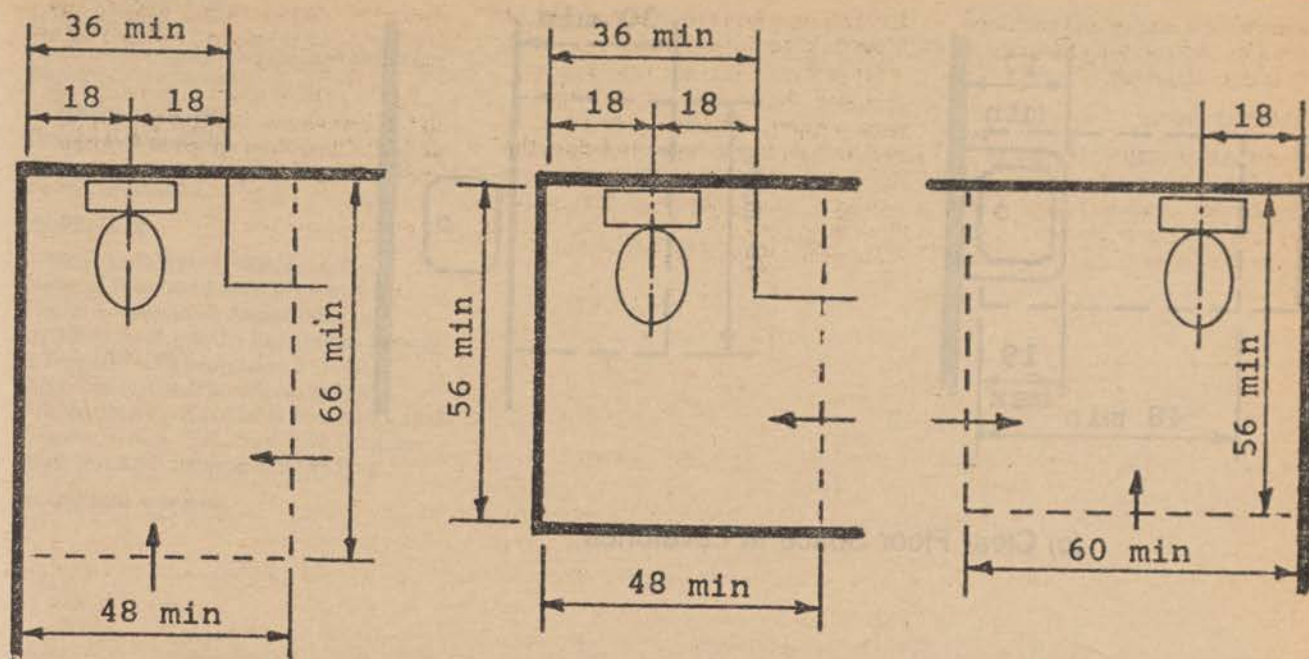
for grab bars (see requirement 6) would meet § 100.205(c)(3)(iv) if:

(a) Sufficient maneuvering space is provided within the bathroom for a person using a wheelchair or other assistive device to enter and close the door, use the fixtures, reopen the door and exit. Doors may swing into the clear floor space provided at any fixture if the maneuvering space is provided.

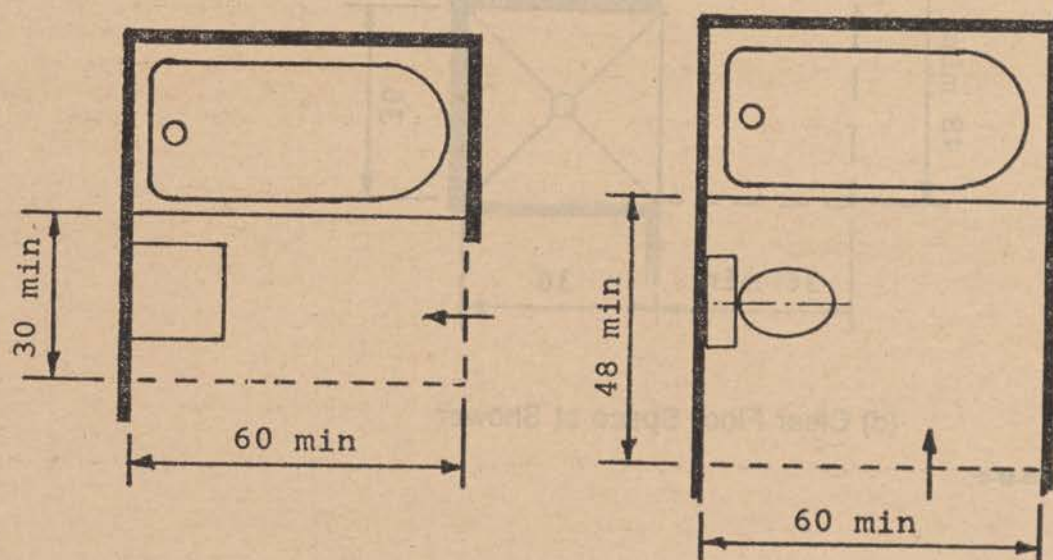
Maneuvering spaces may include any kneespace or toespace available below bathroom fixtures.

(b) Clear floor space is provided at fixtures as shown in Fig. 8 (a), (b) (c) and (d). Clear floor space at fixtures may overlap.

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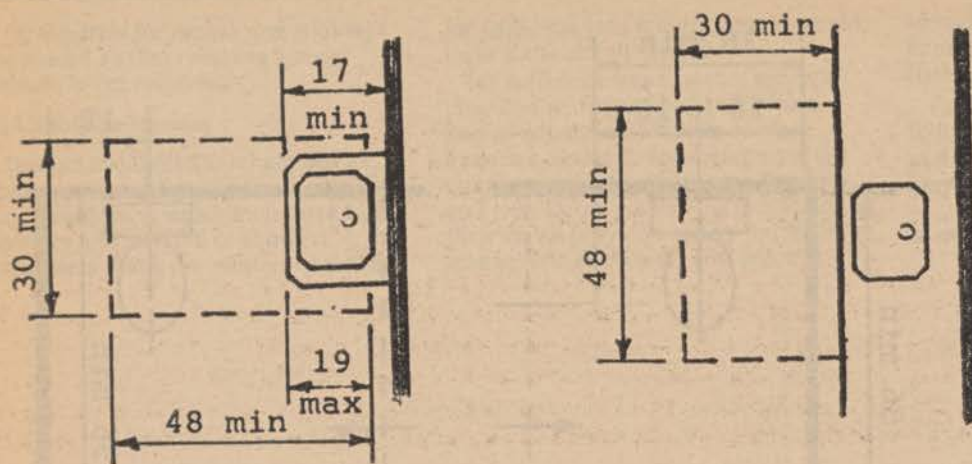


(a) Clear Floor Space for Water Closets

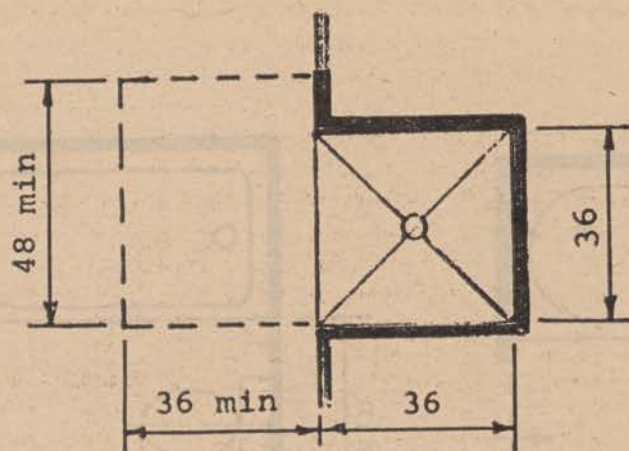


(b) Clear Floor Space at Bathtubs

Fig. 8 Clear Floor Space for Adaptable Bathrooms



(c) Clear Floor Space at Lavatories



(d) Clear Floor Space at Shower

Dated: June 8, 1990.

C. Austin Fitts,

*Assistant Secretary for Housing—Federal
Housing Commissioner.*

Dated: June 8, 1990.

Gordon H. Mansfield,

*Assistant Secretary for Fair Housing and
Equal Opportunity.*

APPENDIX

Note: ANSI A117.1-1986, American National Standard for Buildings and Facilities—Providing Accessibility and Usability for Physically Handicapped People is reprinted with permission from the American National Standards Institute. Printed copies are available from ANSI, 1430 Broadway, New York, New York 10018, for \$9.00 plus \$2.00 shipping and handling.

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ANSI®
A117.1-1986
Revision of
ANSI A117.1-1980

American National Standard
for Buildings and Facilities –
**Providing Accessibility and Usability for
Physically Handicapped People**

Secretariat

National Easter Seal Society
President's Committee on Employment of the Handicapped
U.S. Department of Housing and Urban Development

Approved February 5, 1986

American National Standards Institute, Inc

American National Standard

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Foreword

(This Foreword is not part of American National Standard A117.1-1986.)

The provision of accessibility features in the design of buildings and facilities is a key factor in enabling persons with disabilities to achieve independence. With rehabilitation treatment, training in activities of daily living, and the elimination of environmental barriers, many individuals can live, study, work, and participate in other community activities, fully developing their human potential regardless of physical disabilities.

The first research in barrier-free design was conducted at the University of Illinois under a grant from the Easter Seal Research Foundation. Data resulting from this research constituted the first design specifications for accessibility to be approved by the American National Standards Institute (American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped, ANSI A117.1-1961). The President's Committee on Employment of the Handicapped and the National Easter Seal Society were designated the Secretariat. The standard was reaffirmed in 1971.

In 1974, the U.S. Department of Housing and Urban Development joined the Secretariat by sponsoring further research. The 1980 edition, which resulted from this research, expanded the original standard to include residential environments.

The Accredited Standards Committee on Architectural Features and Site Design of Public Buildings and Residential Structures for Persons with Handicaps, A117, is made up of organizational members representing disability groups, design professions, rehabilitation specialties and services, building owners and management associations, building product manufacturers, building code developers and administrators, senior citizen organizations, and federal standard setting departments.

To ensure the fullest participation of the members of Committee A117 in developing the 1986 edition of the standard, the Secretariat established five task forces to review, and recommend revisions to, the 1980 edition. Suggestions received from the task forces formed the basis for the Secretariat's recommendations and the changes approved by the Committee in 1985.

This edition of the standard (ANSI A117.1-1986) reinforces the concept that a standard is basically a resource for design specifications and leaves to the adopting enforcing agency the application criteria such as where, when, and to what extent such specifications will apply. Clarifying this function for ANSI A117.1-1986 facilitates its referencing in building codes and federal design standards — a major step for achieving uniformity in design specifications. This objective also underscores changes made to align ANSI A117.1-1986 with the Uniform Federal Accessibility Standard (UFAS), which was developed during the review process for this standard. Other changes in ANSI A117.1-1986 reflect technological developments related primarily to specifications for alarm and communications systems for use by individuals with visual or hearing impairments. Changes in format and graphics promote easier use of the standard.

Suggestions for improvement of this standard will be welcome. They should be sent to the American National Standards Institute, 1430 Broadway, New York, NY 10018. ANSI will forward all suggested improvements to the Secretariat.

This standard was processed and approved for submittal to ANSI by the Accredited Standards Committee on Architectural Features and Site Design of Public Buildings and Residential Structures for Persons with Handicaps, A117, Committee

approval of the standard does not necessarily imply that all committee members voted for its approval. At the time it approved this standard, the A117 Committee had the following members:

Edward Matthei, FAIA, Chairman
Rita McGaughey, Secretary
(National Easter Seal Society)

Organization Represented

Name of Representative

Alexander Graham Bell Association for the Deaf, Inc	Sara Conlon
American Association of Retired Persons	Leo E. Baldwin
American Coalition of Citizens with Disabilities	Eunice Fiorito
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American National Standard for Buildings and Facilities –

Providing Accessibility and Usability for Physically Handicapped People

1. Purpose and Application

1.1 Purpose

The specifications in this standard are intended to make buildings and facilities accessible to and usable by people with such physical disabilities as the inability to walk, difficulty walking, reliance on walking aids, blindness and visual impairment, deafness and hearing impairment, incoordination, reaching and manipulation disabilities, lack of stamina, difficulty interpreting and reacting to sensory information, and extremes of physical size. Accessibility and usability allow a physically handicapped person to get to, enter, and use a building or facility.

This standard provides specifications for elements that can be used in making functional spaces accessible. For example, it specifies technical requirements for making doors, routes, seating, and other elements accessible. These accessible elements can be used to design accessible functional spaces such as classrooms, hotel rooms, lobbies, or offices.

This standard is intended for adoption by government agencies and by organizations setting model codes to achieve uniformity in the technical design criteria in building codes and other regulations. This standard may also be used by non-governmental parties as technical design guidelines or requirements to make buildings and facilities accessible to and usable by physically handicapped people.

1.2 Application

This standard can be applied to the following:

- (1) The design and construction of new buildings and facilities, including both spaces and elements; site improvements; and public walks
- (2) Remodeling, alteration, and rehabilitation of existing construction
- (3) Permanent, temporary, and emergency conditions

2. Recommendations to Adopting Authorities

2.1 Administration

This standard does not establish which occupancy or building types are covered and the extent to which each type is covered. Such requirements for application of this standard shall be specified by the adopting authority, including which and how many functional spaces and elements are to be made accessible within each building type, as described in 2.2 through 2.5.

2.2 Number of Spaces and Elements

The administrative authority adopting this standard shall specify the actual number of spaces and elements or establish procedures for determining them based on, but not limited to:

- (1) Population to be served
- (2) Availability to occupants, employees, customers, and visitors
- (3) Distances and time required to use the accessible elements
- (4) Provision of equal opportunity and treatment under law

2.3 Remodeling

The specifications in this standard are based upon the functional requirements of physically handi-

capped people. These specifications remain the same whether they are applied to new construction, remodeling, alteration, or rehabilitation. The administrative authority adopting this standard must specify the extent to which it is to cover remodeling, alteration, or rehabilitation within its jurisdiction.

2.4 Designing for Children

The specifications in this standard are based upon adult dimensions and anthropometrics. If buildings, facilities, or portions thereof serve children primarily, the administrative authority should adjust dimensions and other provisions to make them suitable for children.

2.5 Review Procedures

To promote effective compliance with the requirements of this standard, the administrative authority adopting it should establish a review and approval procedure for construction projects that come under its jurisdiction.

3. Graphics, Dimensions, Referenced Standards, and Definitions

3.1 Graphic Conventions

Graphic conventions used in the illustrations are shown in Table 1. Dimensions that are not marked "minimum," "maximum," or "normal" are absolute, unless otherwise indicated in the text or captions.

3.2 Dimensions

All dimensions are subject to conventional building industry tolerances for field conditions. Millimeter equivalents for dimensions 3 in and larger have been rounded off to the nearest multiple of 5.

3.3 Referenced American National Standards

This standard is intended to be used in conjunction with the following American National Standards:

ANSI/ASME A17.1-1984, Safety Code for Eleva-

tors and Escalators (including supplement ANSI/ASME A17.1a-1985)

ANSI BHMA A156.10-1985, Power Operated Pedestrian Doors

ANSI BHMA A156.19-1984, Power Assist and Low Energy Power Operated Doors

3.4 General Terminology

comply with. Meet one or more specifications of this standard.

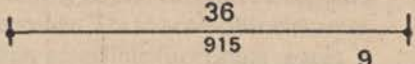
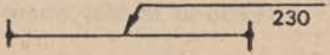
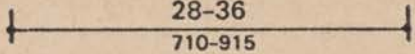

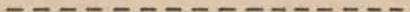
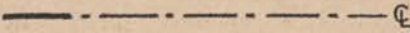
if, if... then. Denotes a specification that applies only when the conditions described are present.

may. Denotes an option or alternative.

shall. Denotes a mandatory specification or requirement.

should. Denotes an advisory specification or recommendation.

Table 1
Graphic Conventions

Convention	Description
	Typical dimension line showing U.S. customary units (in inches) above the line and SI units (in millimeters) below
	Dimensions for short distances indicated on arrow
	Dimension line showing range of dimensions
	Direction of approach
max	Maximum
min	Minimum
	Boundary of clear floor area
	Centerline

3.5 DEFINITIONS

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3.5 Definitions

The following terms shall, for the purpose of this standard, have the meaning indicated in this section.

access aisle. An accessible pedestrian space between elements, such as parking spaces, seating, and desks, that provides clearances appropriate for use of the elements.

accessible. Describes a site, building, facility, or portion thereof that complies with this standard and that can be approached, entered, and used by physically handicapped people.

accessible route. A continuous unobstructed path connecting all accessible elements and spaces in a building or facility that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps, and lifts.

adaptability. The capability of certain building spaces and elements, such as kitchen counters, sinks, and grab bars, to be altered or added so as to accommodate the needs of persons with and without disabilities, or to accommodate the needs of persons with different types or degrees of disability.

administrative authority. A jurisdictional body that adopts or enforces regulations and standards for the design, construction, or operation of buildings and facilities.

assembly area. A room or space accommodating a number of individuals as specified by the authority having jurisdiction and used for religious, recreational, educational, political, social, or amusement purposes, or for the consumption of food and drink, including all connected rooms or spaces with a common means of egress and ingress. Such areas as conference rooms would have to be accessible in accordance with other parts of this standard, but would not have to meet all of the criteria associated with assembly areas.

authority having jurisdiction. See *administrative authority*.

automatic door. A door equipped with a power-operated mechanism and controls that open and close the door automatically upon receipt of a momentary actuating signal. The switch that begins

the automatic cycle may be a photoelectric device, floor mat, sensing device, or manual switch mounted on or near the door itself (see *power-assisted door*).

children. People below the age of twelve (that is, elementary school age and younger).

circulation path. An exterior or interior way of passage from one place to another for pedestrians, including, but not limited to, walks, hallways, courtyards, stairways, and stair landings.

clear. Unobstructed.

common use. Refers to those interior and exterior rooms, spaces, or elements that are made available for the use of a restricted group of people (for example, residents of an apartment building, the occupants of an office building, or the guests of such residents or occupants).

coverage. The extent or range of accessibility that a particular administrative authority adopts and requires.

cross slope. The slope of a pedestrian way that is perpendicular to the direction of travel (see *running slope*).

curb ramp. A short ramp cutting through a curb or built up to it.

detectable. Perceptible by one or more of the senses.

detectable warning. A standardized surface texture applied to or built into walking surfaces or other elements to warn visually impaired people of hazards in the path of travel.

disability. A limitation or loss of use of a physical, mental, or sensory body part or function.

dwelling unit. A single unit of residence that provides a kitchen or food preparation area, in addition to rooms and spaces for living, bathing, sleeping, and the like. A single-family home is a dwelling unit, and dwelling units are to be found in such housing types as townhouses and apartment buildings.

egress, means of. A path of exit that meets all applicable code specifications of the regulatory building agency having jurisdiction over the building or facility.

element. An architectural or mechanical component of a building, facility, space, or site that can be used in making functional spaces accessible (for

ANSI A117.1-1986

3.5 DEFINITIONS

example, telephone, curb ramp, door, drinking fountain, seating, water closet).

facility. All or any portion of a building, structure, or area, including the site on which such building, structure, or area is located, wherein specific services are provided or activities are performed.

functional spaces. The rooms and spaces in a building or facility that house the major activities for which the building or facility is intended.

housing. A building, facility, or portion thereof, excluding inpatient health care facilities, that contains one or more dwelling units or sleeping accommodations. Housing may include, but is not limited to, one-family and two-family dwellings, multifamily dwellings, group homes, hotels, motels, dormitories, and mobile homes.

marked crossing. A crosswalk or other identified path intended for pedestrian use in crossing a vehicular way.

multifamily dwelling. Any building containing more than two dwelling units.

operable part. A part of a piece of equipment or appliance used to insert or withdraw objects, or to activate, deactivate, or adjust the equipment or appliance (for example, coin slot, pushbutton, handle).

physically handicapped person. An individual who has a physical impairment, including impaired sensory, manual, or speaking abilities, that results in a functional limitation in gaining access to and using a building or facility.

power-assisted door. A door used for human passage, with a mechanism that helps to open the door, or to relieve the opening resistance of the door, upon the activation of a switch or the use of a continued force applied to the door itself. If the switch or door is released, such doors immediately begin to close or close completely within 3 to 30 seconds (see *automatic door*).

principal entrance. An entrance intended to be used by the residents or users to enter or leave a building or facility. This may include, but is not limited to, the main entrance.

public use. Describes interior and exterior rooms or spaces that are made available to the general pub-

lic. Public use may be provided at a building or facility that is privately or publicly owned.

ramp. A walking surface in an accessible space that has a running slope greater than 1:20.

running slope. The slope of a pedestrian way that is parallel to the direction of travel (see *cross slope*).

service entrance. An entrance intended primarily for delivery or service.

signage. Verbal, symbolic, and pictorial information.

site. A parcel of land bounded by a property line or a designated portion of a public right-of-way.

site improvements. Landscaping, pedestrian and vehicular pathways, outdoor lighting, recreational facilities, and the like, added to a site.

sleeping accommodations. Rooms in which people sleep (for example, dormitory and hotel or motel guest rooms).

space. A definable area (for example, toilet room, hall, assembly area, entrance, storage room alcove, courtyard, or lobby).

tactile. Describes an object that can be perceived using the sense of touch.

temporary. Applies to facilities that are not of permanent construction but are extensively used or essential for public use for a given (short) period of time, for example, temporary classrooms or classroom buildings at schools and colleges, or facilities around a major construction site to make passage accessible, usable, and safe for everybody. Structures directly associated with the actual processes of major construction, such as portable toilets, scaffolding, bridging, trailers, and the like, are not included.

vehicular way. A route intended for vehicular traffic, such as a street, driveway, or parking lot.

walk. An exterior pathway with a prepared surface intended for pedestrian use, including general pedestrian areas such as plazas and courts.

walking aid. A device used by a person who has difficulty walking (for example, a cane, crutch, walker, or brace).

4. Accessible Elements and Spaces

4.1 Basic Components

Accessible sites, facilities, and buildings, including public-use, employee-use, and common-use spaces in housing facilities, shall provide accessible elements and spaces as identified in Table 2. Application by adopting authorities shall be in accordance with Section 2.

4.2 Space Allowances and Reach Ranges

4.2.1* Wheelchair Passage Width. The minimum clear width for single wheelchair passage shall be 32 in (815 mm) at a point and 36 in (915 mm) continuously (see Fig. 1).

4.2.2 Width for Wheelchair Passing. The minimum width for two wheelchairs to pass is 60 in (1525 mm) (see Fig. 2).

4.2.3* Wheelchair Turning Space. The space required for a wheelchair to make a 180-degree turn is a clear space of 60 in (1525 mm) diameter (see Fig. 3(a)) or a T-shaped space (see Fig. 3(b)).

*See Appendix for additional information.

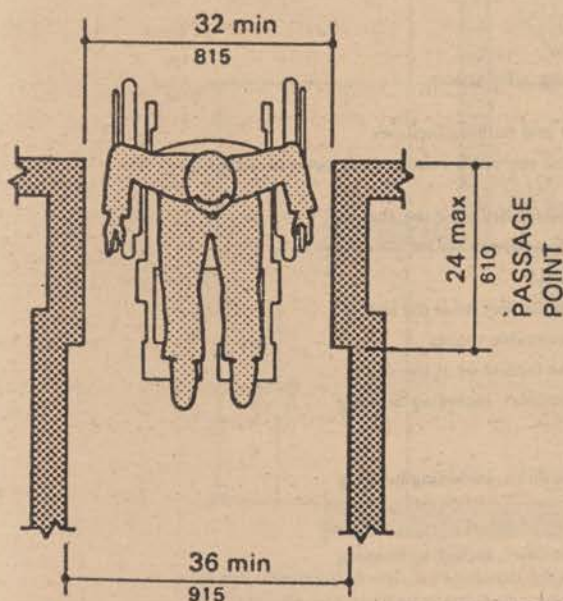


Fig. 1

Minimum Clear Width for Single Wheelchair

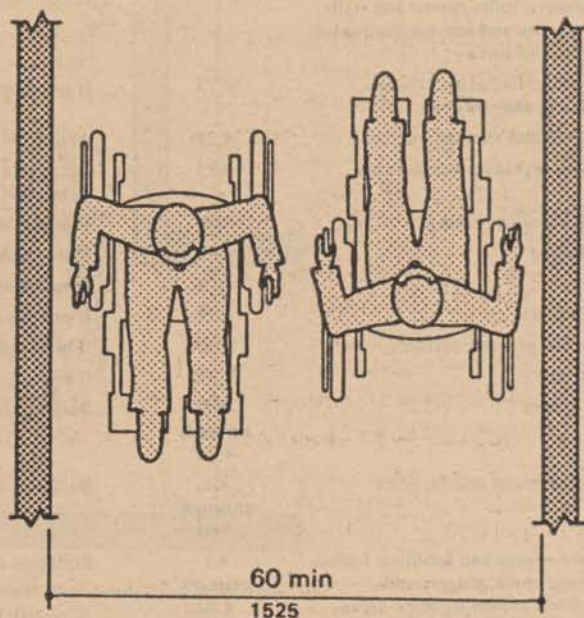


Fig. 2

Minimum Clear Width for Two Wheelchairs

4.2.4* Clear Floor or Ground Space for Wheelchairs

4.2.4.1 Size and Approach. The minimum clear floor or ground space required to accommodate a single, stationary wheelchair and occupant is 30 in by 48 in (760 mm by 1220 mm) (see Fig. 4(a)). The minimum clear floor or ground space for wheelchairs may be positioned for forward or parallel approach to an object (see Fig. 4(b) and (c)). Clear floor or ground space for wheelchairs may be part of the knee space required under some objects.

4.2.4.2 Relationship of Maneuvering Clearances to Wheelchair Spaces. One full unobstructed side of the clear floor or ground space for a wheelchair shall adjoin or overlap an accessible route or adjoin another wheelchair clear floor space. If a clear floor space is located in an alcove or otherwise confined on all or part of three sides, additional maneuvering clearances shall be provided as shown in Fig. 4(d) and (e).

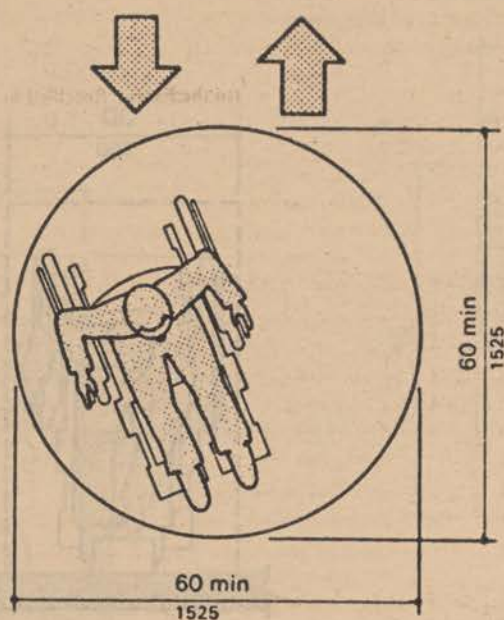
4.2.4.3 Surfaces of Wheelchair Spaces. Clear floor or ground spaces for wheelchairs shall comply with 4.5.

Table 2
Basic Components for Accessible Sites,
Facilities, and Buildings

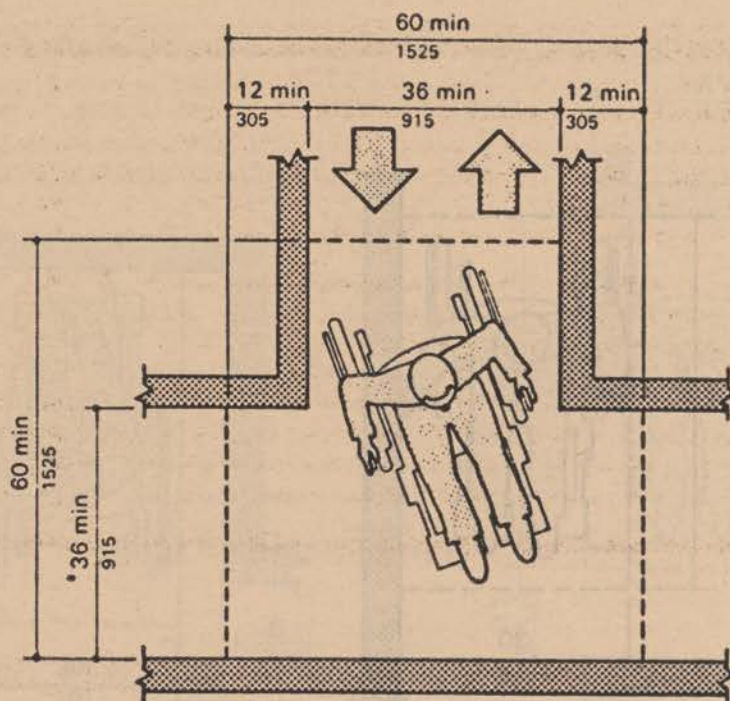
Accessible Element or Space	Section	Application (to the Extent Specified by the Adopting Authority)
1. Accessible route(s)	4.3	Within the boundary of the site: (a) From public transportation stops, accessible parking spaces, accessible passenger loading zones, and public streets or sidewalks to accessible building entrances (b) Connecting accessible buildings, facilities, elements and spaces that are on the same site (c) Connecting accessible building or facility entrances with accessible spaces and elements within the building or facility
2. Protruding objects	4.4	Accessible routes or maneuvering space including, but not limited to, halls, corridors, passageways, or aisles
3. Ground and floor surface treatments	4.5	Accessible routes, rooms, and spaces, including floors, walks, ramps, stairs, and curb ramps
4. Parking and passenger-loading zones	4.6	If provided at the site
5. Curb ramps	4.7	Accessible routes crossing curbs
6. Ramps	4.8	Accessible routes with slopes greater than 1:20
7. Stairs	4.9	Stairs on accessible routes connecting levels not connected by an elevator
8. Elevator	4.10	Accessible routes connecting different accessible levels
9. Platform lift	4.11	May be used in lieu of an elevator or ramp under certain conditions
10. Windows	4.12	If windows are intended to be operated by the occupant
11. Doors	4.13	Accessible entrances, accessible spaces, accessible routes, egress
12. Entrances	4.14	When part of accessible routes. Generally, one or more accessible entrances will serve transportation facilities, passenger loading zones, parking facilities, taxi stands, public streets and sidewalks, and interior vertical access
13. Drinking fountains and water coolers	4.15	If provided in the facility or at the site
14. Toilet rooms and bathing facilities including water closets, toilet rooms and stalls, urinals, lavatories and mirrors, bathtubs, shower stalls, and sinks	4.22	Public-use and common-use facilities
15. Storage facilities including cabinets, shelves, closets, and drawers	4.23	If provided in accessible spaces
16. Grab bars, tub and shower seats	4.24	Accessible toilet and bathing facilities
17. Controls and operating mechanisms	4.25	Accessible spaces, accessible routes, or as parts of accessible elements
18. Emergency warning systems	4.26	If provided in the facility or at the site
19. Tactile warnings	4.27	Doors to hazardous areas
20. Signs	4.28	Rooms and spaces
21. Public telephones	4.29	If provided in the facility or at the site
22. Seating, tables, or work surfaces	4.30	If provided in accessible spaces
23. Places of assembly	4.31	If provided in the facility or at the site
24. Public-use spaces	4.1 through 4.30	Buildings and facilities, including housing
25. Employee-use spaces and facilities	4.1 through 4.30	Buildings and facilities, including housing
26. Common-use spaces and facilities, including swimming pools, playgrounds, entrances, rental offices, lobbies, elevators, mailbox areas, lounges, halls, corridors, and the like.	4.1 through 4.30	Buildings and facilities, including housing

4.2 SPACE ALLOWANCES AND REACH RANGES

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(a) 60-in (1525-mm)-Diameter Space



NOTE: Dashed lines indicate minimum length of clear space required on each arm of the T-shaped space in order to complete the turn.

(b) T-Shaped Space for 180° Turns

Fig. 3
Wheelchair Turning Space

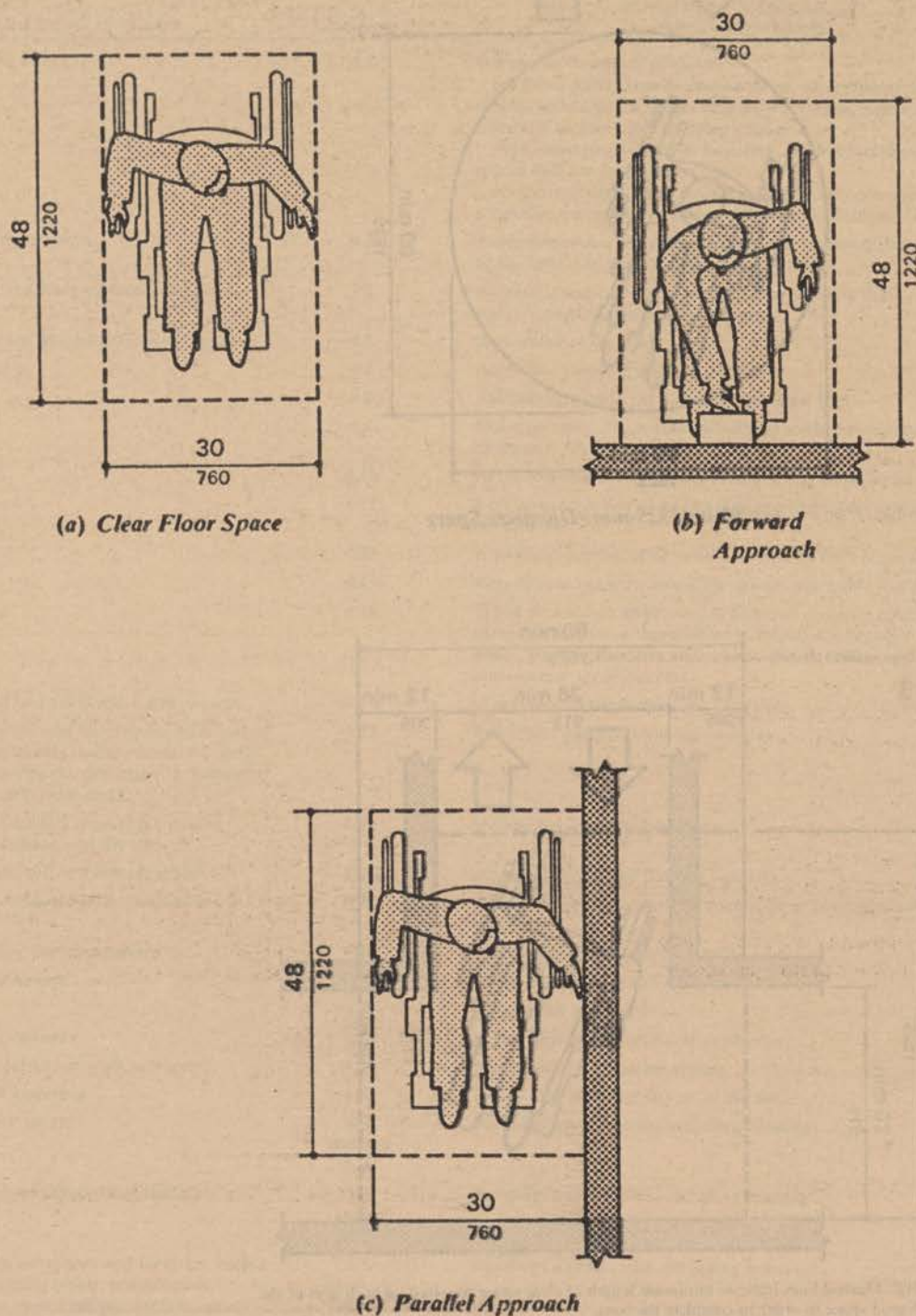
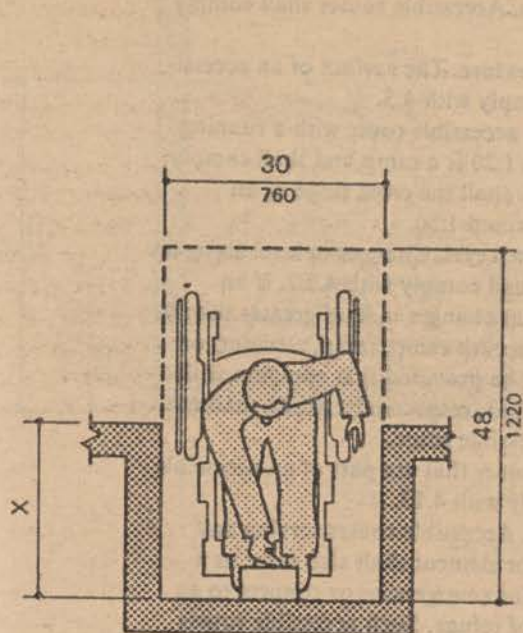
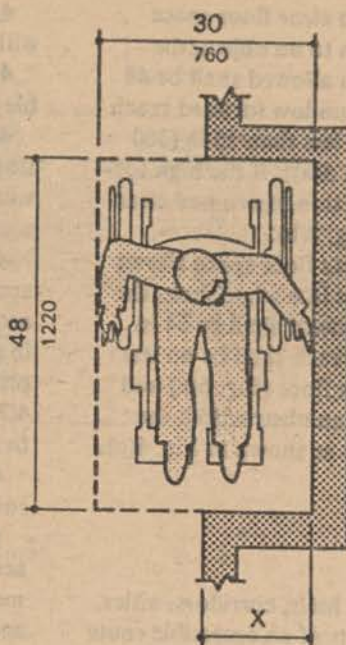


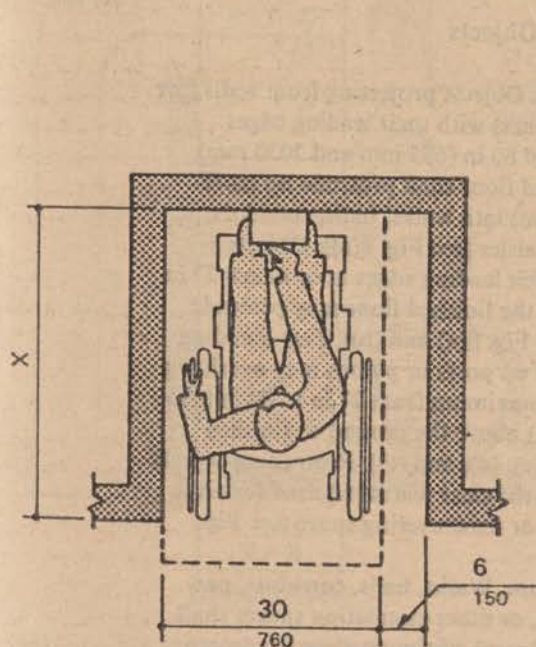
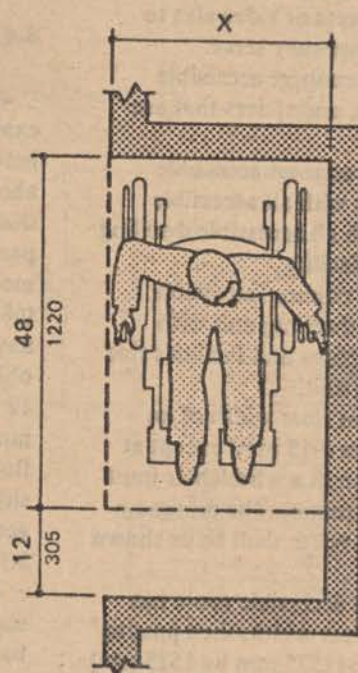
Fig. 4
Minimum Clear Floor Space for Wheelchairs

4.2 SPACE ALLOWANCES AND REACH RANGES

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NOTE: $x \leq 24$ in (610 mm).NOTE: $x \leq 15$ in (380 mm).

(d) Clear Floor Space in Alcoves

NOTE: If $x > 24$ in (610 mm), then an additional maneuvering clearance of 6 in (150 mm) shall be provided as shown.NOTE: If $x > 15$ in (380 mm), then an additional maneuvering clearance of 12 in (305 mm) shall be provided as shown.

(e) Additional Maneuvering Clearances for Alcoves

Fig. 4 Minimum Clear Floor Space for Wheelchairs (Continued)

4.2.5 Forward Reach. If the clear floor space allows only forward approach to an object, the maximum high forward reach allowed shall be 48 in (1220 mm) and the minimum low forward reach shall be unobstructed and no less than 15 in (380 mm) above the floor (see Fig. 5(a)). If the high forward reach is over an obstruction, reach and clearances shall be as shown in Fig. 5(b).

4.2.6 Side Reach. If the clear floor space allows parallel approach by a person in a wheelchair, the maximum high side reach allowed shall be 54 in (1370 mm) and the low side reach shall be no less than 9 in (230 mm) above the floor (Fig. 6(a) and (b)). If the side reach is over an obstruction, the reach and clearances shall be as shown in Fig. 6(c).

4.3 Accessible Route

4.3.1* General. All walks, halls, corridors, aisles, and other spaces that are part of an accessible route shall comply with 4.3.

4.3.2 Location

(1) Accessible routes within the boundary of the site shall be provided from public transportation stops, accessible parking and accessible passenger loading zones, and public streets or sidewalks to the accessible building entrance they serve.

(2) Accessible routes shall connect accessible buildings, facilities, elements, and spaces that are on the same site.

(3) Accessible routes shall connect accessible building or facility entrances with all accessible spaces and elements and with all accessible dwelling units within the building or facility.

(4) Accessible routes shall connect accessible entrances of each accessible dwelling unit with those exterior and interior spaces and facilities that serve the accessible dwelling unit.

4.3.3 Width. The minimum clear width of an accessible route shall be 36 in (915 mm) except at doors (see 4.13.5). If a person in a wheelchair must make a turn around an obstruction, the minimum clear width of the accessible route shall be as shown in Fig. 7(a) and (b).

4.3.4 Passing Space. If an accessible route has less than 60 in (1525 mm) clear width, then passing spaces at least 60 in by 60 in (1525 mm by 1525 mm) shall be located at reasonable intervals not to exceed 200 ft (61 m). An intersection of two corridors or walks shall also be considered a passing space.

*See Appendix for additional information.

4.3.5 Headroom. Accessible routes shall comply with 4.4.2.

4.3.6 Surface Texture. The surface of an accessible route shall comply with 4.5.

4.3.7 Slope. An accessible route with a running slope greater than 1:20 is a ramp and shall comply with 4.8. Nowhere shall the cross slope of an accessible route exceed 1:50.

4.3.8 Changes in Level. Changes in level along an accessible route shall comply with 4.5.2. If an accessible route has changes in level greater than 1/2 in (13 mm), then a curb ramp, ramp, elevator, or platform lift shall be provided that complies with 4.7, 4.8, 4.10, or 4.11, respectively. Stairs shall not be part of an accessible route.

4.3.9 Doors. Doors that are part of an accessible route shall comply with 4.13.

4.3.10* Egress. Accessible routes serving any accessible space or element shall also serve as a means of egress for emergencies or connect to an accessible place of refuge. Such accessible routes and places of refuge shall comply with the requirements established by the administrative authority having jurisdiction.

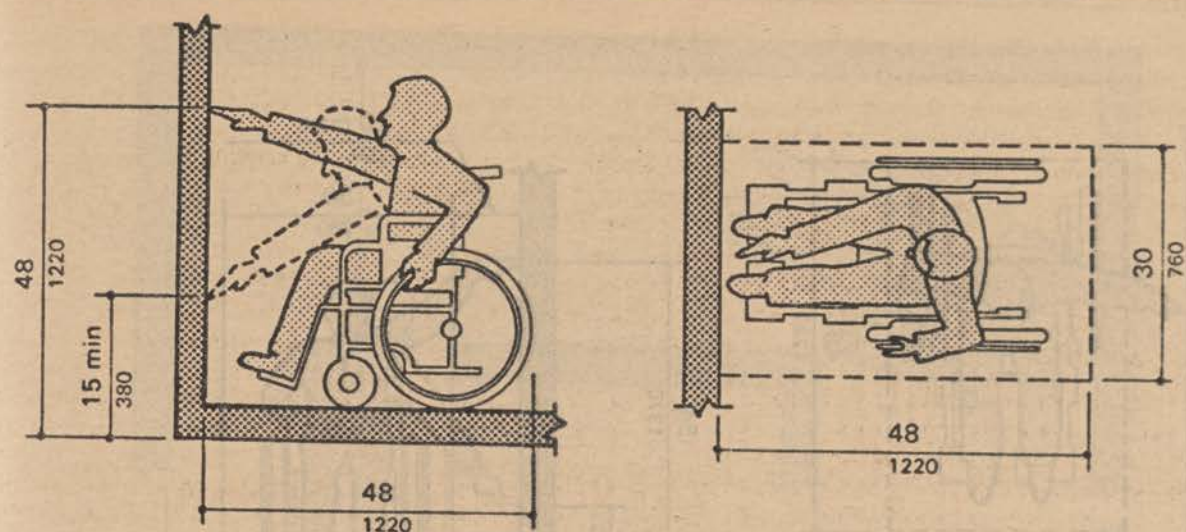
4.4 Protruding Objects

4.4.1* General. Objects projecting from walls (for example, telephones) with their leading edges between 27 in and 80 in (685 mm and 2030 mm) above the finished floor shall protrude no more than 4 in (100 mm) into walks, halls, corridors, passageways, or aisles (see Fig. 8(a)). Objects mounted with their leading edges at or below 27 in (685 mm) above the finished floor may protrude any amount (see Fig. 8(a) and (b)). Free-standing objects mounted on posts or pylons may overhang 12 in (305 mm) maximum from 27 in to 80 in (685 mm to 2030 mm) above the ground or finished floor (see Fig. 8(c), (d), and (e)). Protruding objects shall not reduce the clear width required for an accessible route or maneuvering space (see Fig. 8(f)).

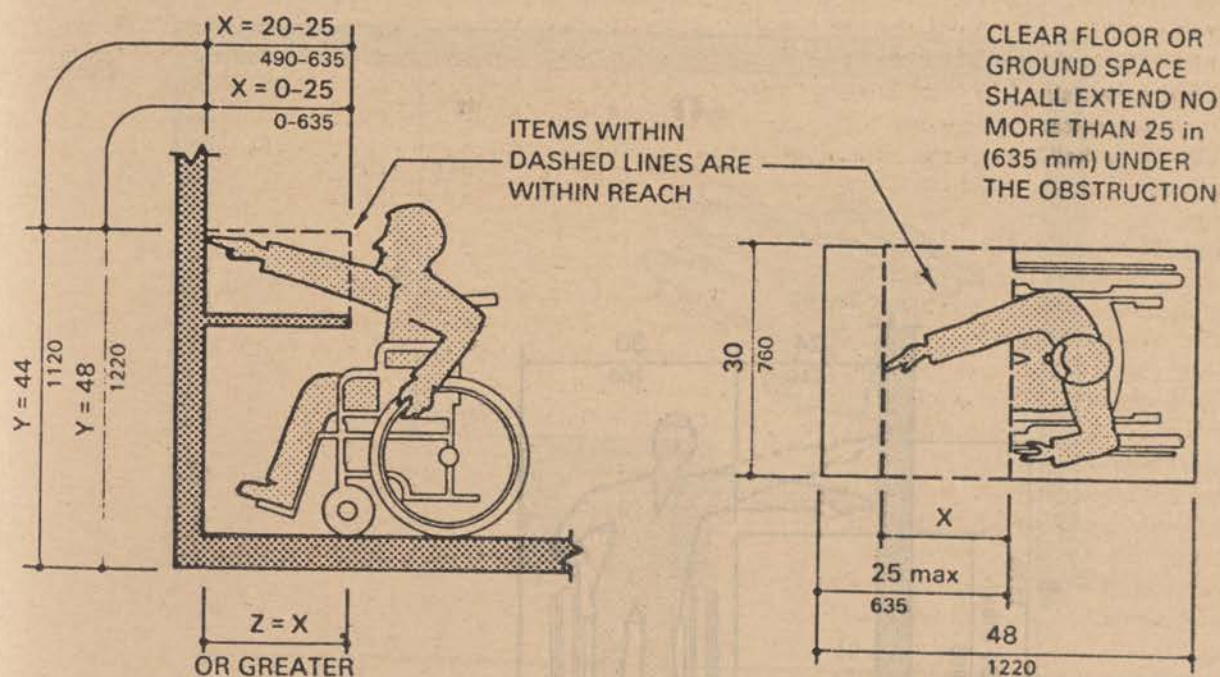
4.4.2 Headroom. Walks, halls, corridors, passageways, aisles, or other circulation spaces shall have 80 in (2030 mm) minimum clear headroom (see Fig. 8(a)). If vertical clearance of an area adjoining an accessible route is reduced to less than 80 in (2030 mm) nominal dimension, a guardrail or other barrier having its leading edge at or below 27 in (685 mm) above the finished floor shall be provided (see Fig. 8(c) and (d)).

4.4 PROTRUDING OBJECTS

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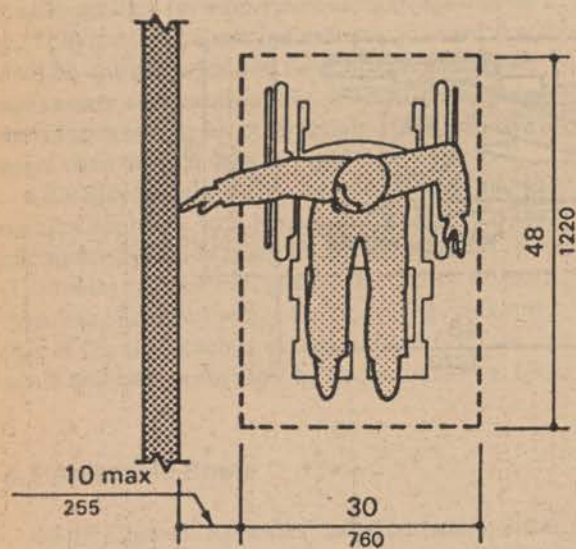
(a) Forward Reach Limit



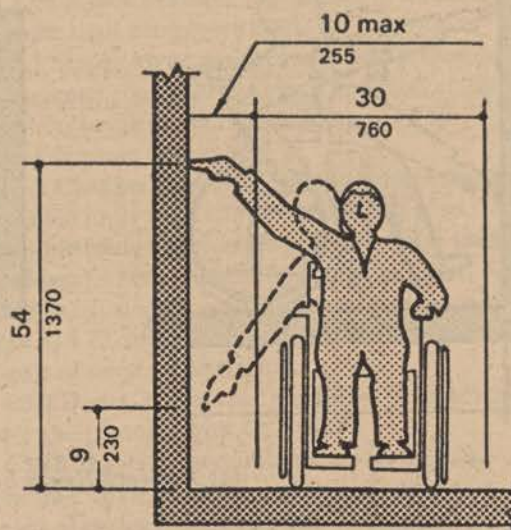
NOTE: x = Reach distance, y = Maximum height, z = Clear knee space, z is the clear space below the obstruction, which shall be at least as deep as the reach distance, x .

(b) Maximum Forward Reach over an Obstruction

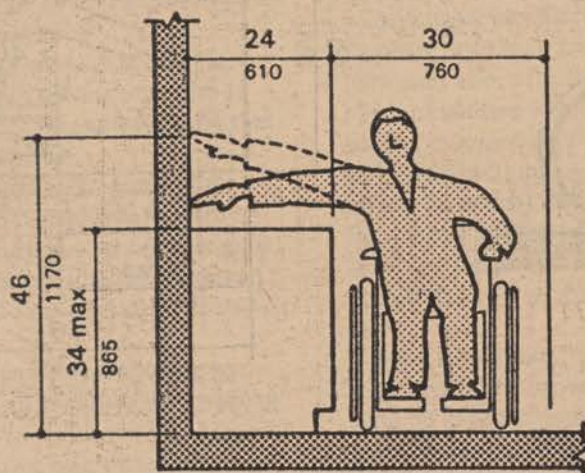
Fig. 5
Forward Reach



(a) Clear Floor Space — Parallel Approach



(b) High and Low Side Reach Limits

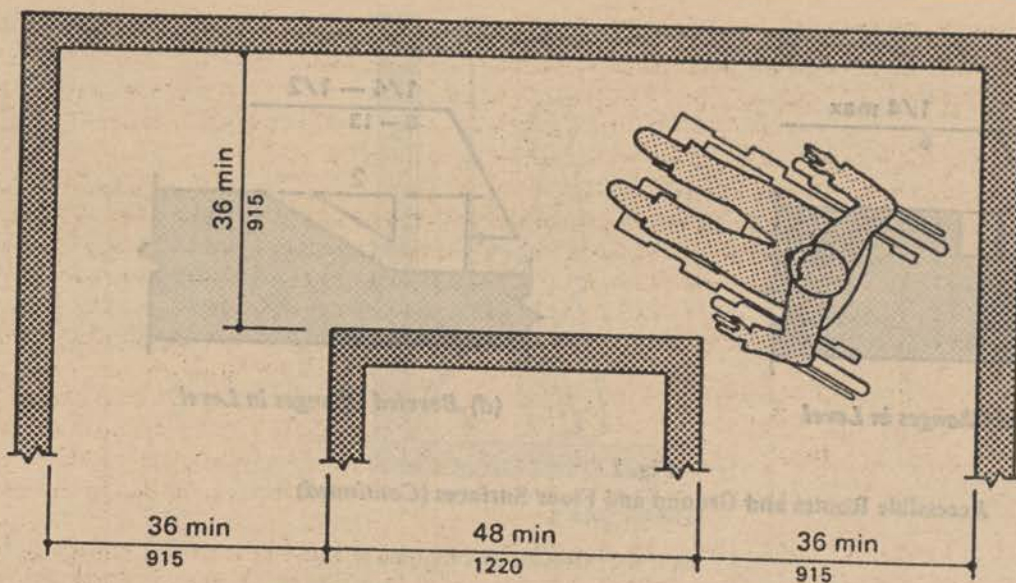


(c) Maximum Side Reach over Obstruction

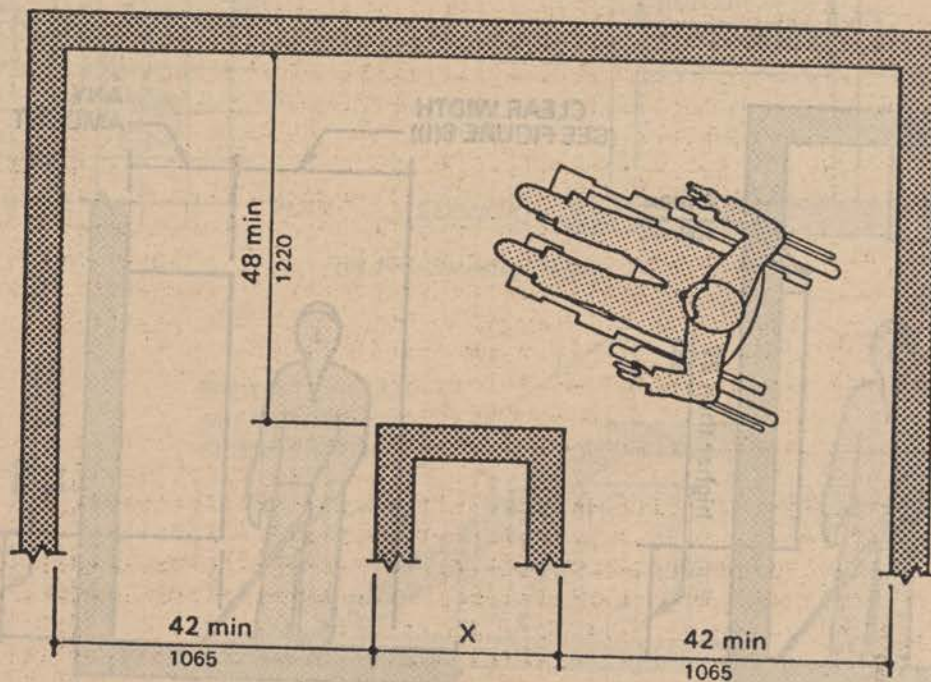
Fig. 6
Side Reach

4.4 PROTRUDING OBJECTS

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(a) Width of Accessible Route for 90° Turn



NOTE: Dimensions shown apply when $X < 48$ in (1220 mm).

(b) Width of Accessible Route for Turns around an Obstruction

Fig. 7
Accessible Routes and Ground and Floor Surfaces

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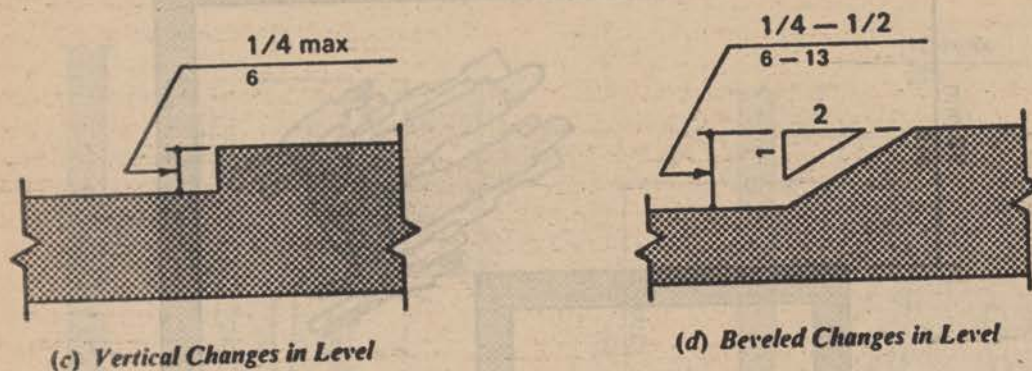


Fig. 7
Accessible Routes and Ground and Floor Surfaces (Continued)

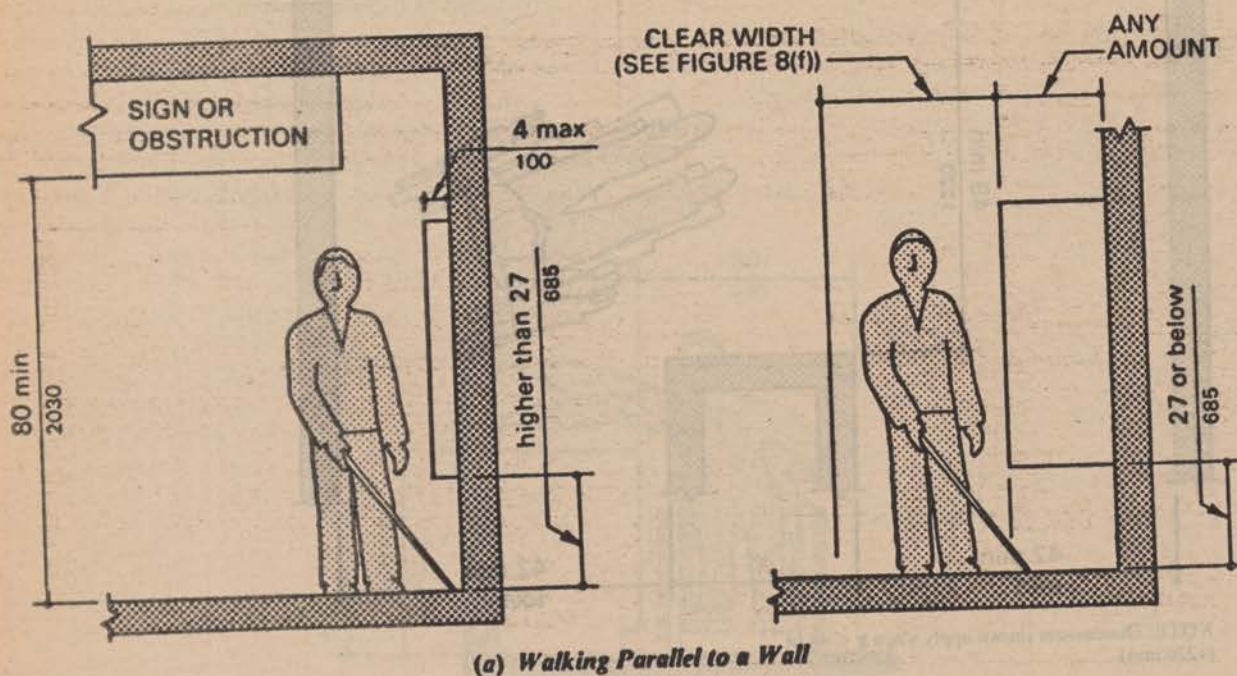
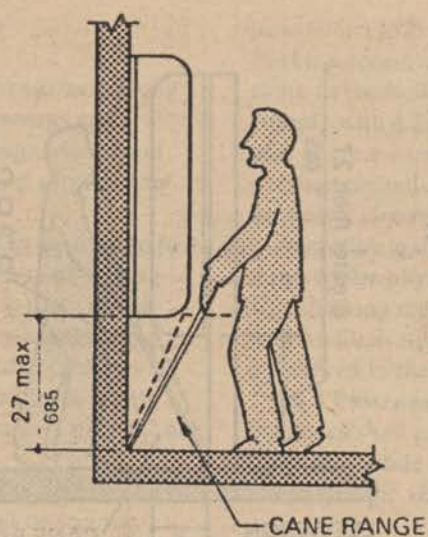


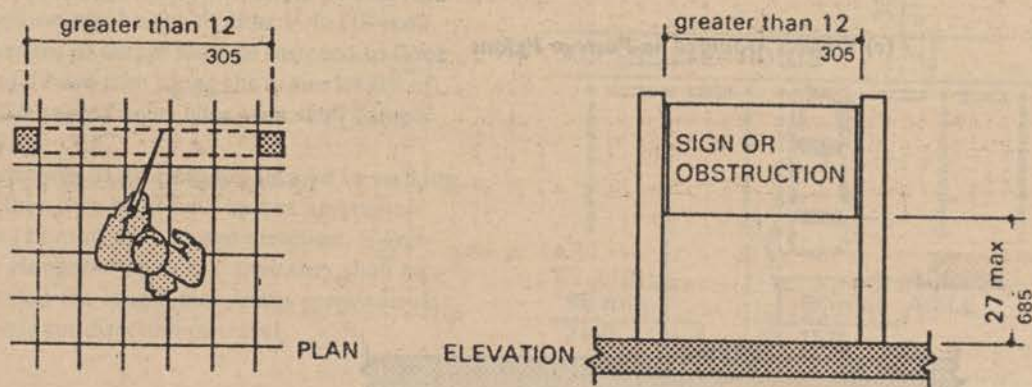
Fig. 8
Protruding Objects

4.4 PROTRUDING OBJECTS

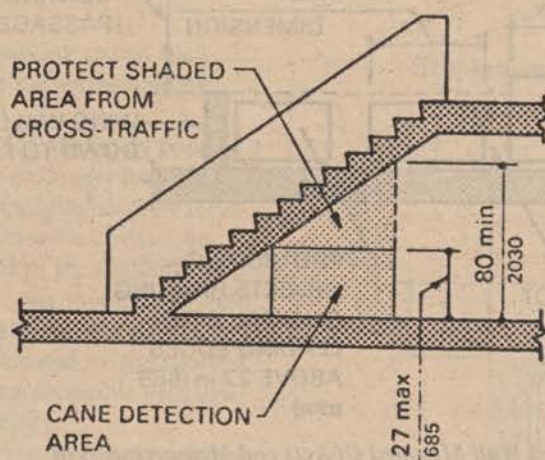
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(b) Walking Perpendicular to a Wall



(c) Free-Standing Objects

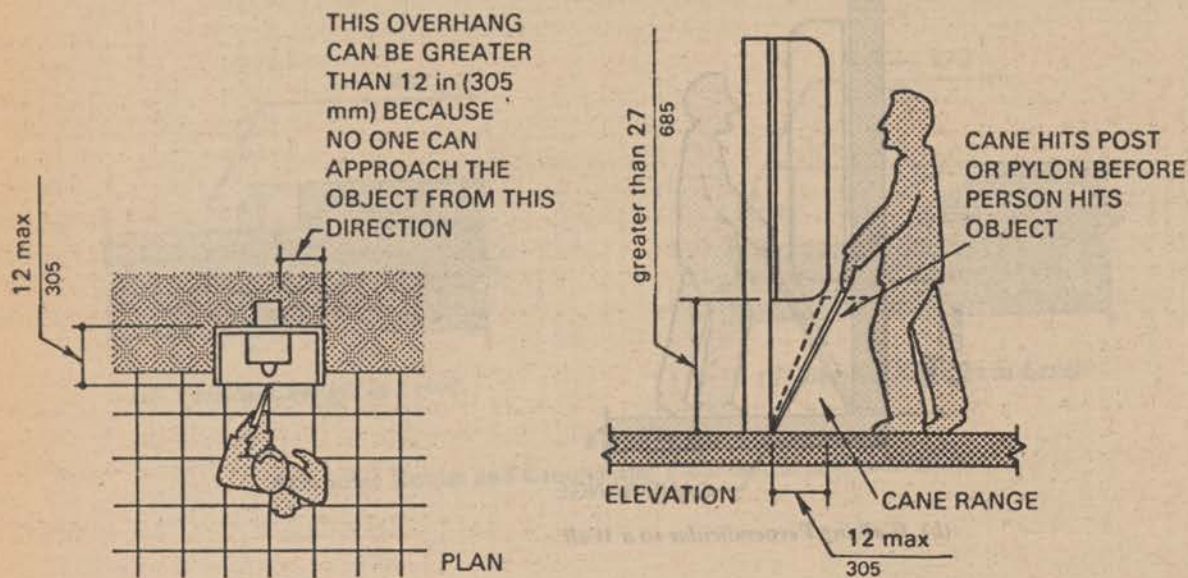


(d) Overhead Hazards

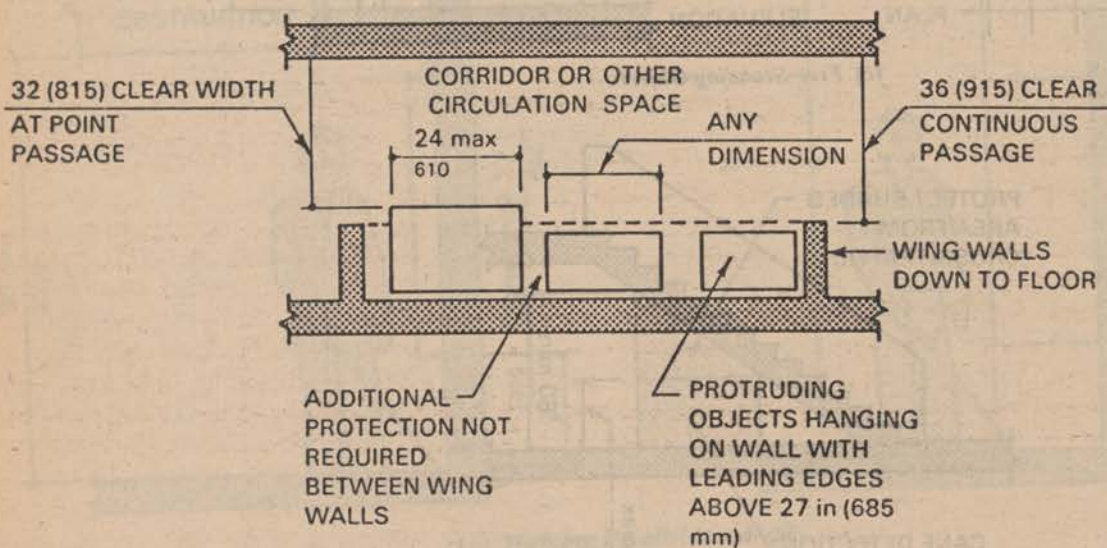
Fig. 8 Protruding Objects (Continued)

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4.4 PROTRUDING OBJECTS



(e) Objects Mounted on Posts or Pylons



(f) Example of Protection around Wall-Mounted Objects and Measurements of Clear Widths

Fig. 8 Protruding Objects (Continued)

4.6 PARKING SPACES AND PASSENGER LOADING ZONES

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4.5 Ground and Floor Surfaces

4.5.1* General. Ground and floor surfaces along accessible routes and in accessible rooms and spaces, including floors, walks, ramps, stairs, and curb ramps, shall be stable, firm, and slip resistant, and shall comply with 4.5.

4.5.2 Changes in Level. Changes in level up to $\frac{1}{4}$ in (6 mm) may be vertical and without edge treatment. Changes in level between $\frac{1}{4}$ in and $\frac{1}{2}$ in (6 mm and 13 mm) shall be beveled with a slope no greater than 1:2 (see Fig. 7(c) and (d)). Changes in level greater than $\frac{1}{2}$ in (13 mm) shall be accomplished by means of a ramp that complies with 4.7 or 4.8.

4.5.3* Carpet. If carpet or carpet tile is used on a ground or floor surface, then it shall be securely attached; have a firm cushion, pad, or backing or no cushion or pad; and have a level loop, textured loop, level cut pile, or level cut, uncut pile texture. The maximum pile height shall be $\frac{1}{2}$ in (13 mm). Exposed edges of carpet shall be fastened to floor surfaces and have trim along the entire length of the exposed edge. Carpet edge trim shall comply with 4.5.2.

4.5.4 Gratings. If gratings are located in walking surfaces, then they shall have spaces no greater than $\frac{1}{2}$ in (13 mm) wide in one direction. If gratings have elongated openings, then they shall be placed so that the long dimension is perpendicular to the dominant direction of travel.

4.6 Parking Spaces and Passenger Loading Zones

4.6.1 General. Accessible parking spaces shall comply with 4.6.2. Accessible passenger loading zones shall comply with 4.6.3.

Parking spaces designated for physically handicapped people and accessible passenger loading zones that serve a particular building shall be located on the shortest possible accessible circulation route to an accessible entrance of the building. In separate parking structures or lots that do not serve a particular building, parking spaces for physically handicapped people shall be located on the shortest possible circulation route to an accessible pedestrian entrance of the parking facility.

4.6.2* Parking Spaces. Parking spaces for physically handicapped people shall be at least 96 in (2440 mm) wide and shall have an adjacent access

aisle 60 in (1525 mm) wide minimum (see Fig. 9). Parking access aisles shall be part of the accessible route to the building or facility entrance and shall comply with 4.3. Two accessible parking spaces may share a common access aisle. Parked vehicle overhangs shall not reduce the clear width of an accessible circulation route.

Accessible parking spaces shall be designated as reserved for physically handicapped people by a sign showing the symbol of accessibility (see 4.28.5). Such signs shall not be obscured by a vehicle parked in the space.

4.6.3 Passenger Loading Zones. Passenger loading zones shall provide an access aisle at least 48 in (1220 mm) wide and 20 ft (6 m) long adjacent and parallel to the vehicle pull-up space (see Fig. 10). If

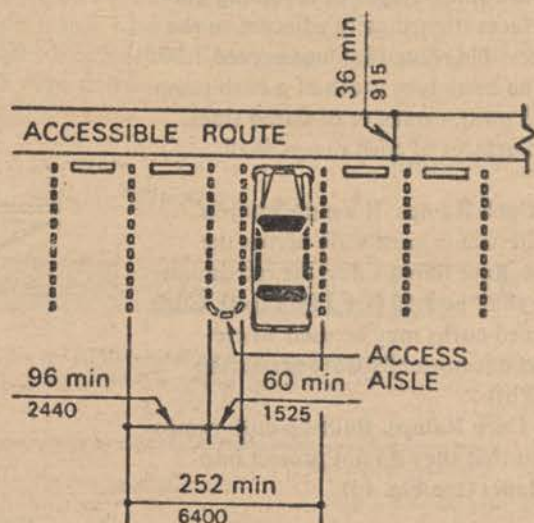


Fig. 9
Dimensions of Parking Spaces

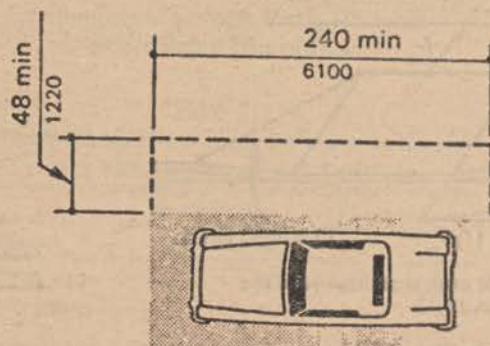


Fig. 10
Access Aisle at Passenger Loading Zones

*See Appendix for additional information.

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4.7 CURB RAMPS

there are curbs between the access aisle and the vehicle pull-up space, then a curb ramp complying with 4.7 shall be provided.

A minimum vertical clearance of 108 in (2745 mm) shall be provided at accessible passenger loading zones and along vehicle access routes to such areas from site entrances.

4.7 Curb Ramps

4.7.1 Location. Curb ramps complying with 4.7 shall be provided wherever an accessible route crosses a curb.

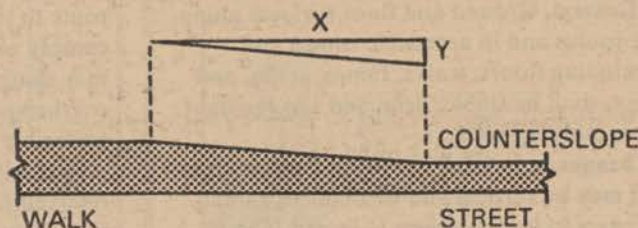
4.7.2 Slope. Slopes of curb ramps shall comply with 4.8.2. The slope shall be measured as shown in Fig. 11. Maximum counterslopes of adjoining gutters and road surfaces immediately adjacent to the curb ramp or accessible route shall not exceed 1:20.

4.7.3 Width. The minimum width of a curb ramp shall be 36 in (915 mm), exclusive of flared sides.

4.7.4 Surface. Surfaces of curb ramps shall comply with 4.5.

4.7.5 Sides of Curb Ramps. If a curb ramp is located where pedestrians must walk across the ramp, then it shall have flared sides; the maximum slope of the flare shall be 1:10 (see Fig. 12(a)). Curb ramps with returned curbs may be used where pedestrians would not normally walk across the ramp (see Fig. 12(b)).

4.7.6 Built-Up Curb Ramps. Built-up curb ramps shall be located so that they do not project into vehicular traffic lanes (see Fig. 13).



NOTES:

- (1) Slope = $y:x$, where x is a level plane.
- (2) Counterslope shall not exceed 1:20.

Fig. 11
Measurement of Curb Ramp Slopes

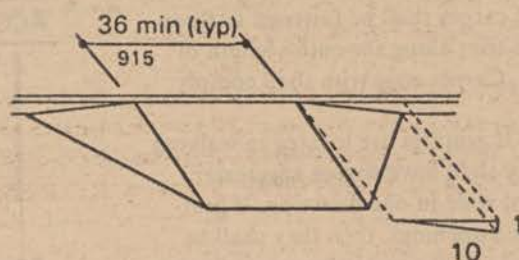
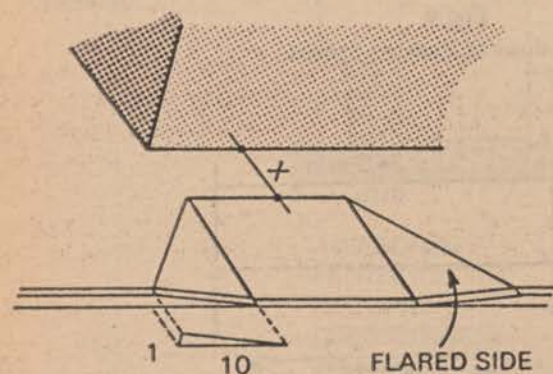
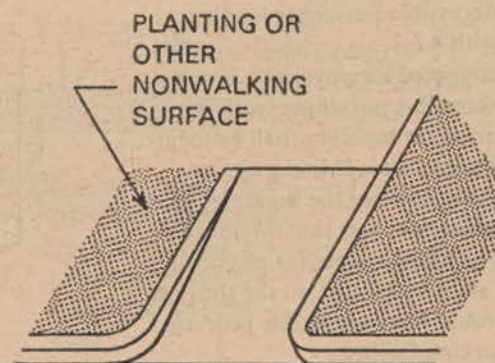


Fig. 13
Built-Up Curb Ramp



NOTE: If $x < 48$ in (1220 mm), then the slope of the flared sides shall not exceed 1:12.

(a) Flared Sides



(b) Returned Curb

Fig. 12
Sides of Curb Ramps

4.8 RAMPS

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4.7.7 Warning Textures. A curb ramp shall have a detectable warning texture complying with 4.27 and extending the full width and depth of the curb ramp, including any flares (see Fig. 14).

4.7.8 Obstructions. Curb ramps shall be located or protected to prevent their obstruction by parked vehicles.

4.7.9 Location at Marked Crossings. Curb ramps at marked crossings shall be wholly contained within the markings, excluding any flared sides (see Fig. 15).

4.7.10 Diagonal Curb Ramps. If diagonal (or corner-type) curb ramps have returned curbs or other well-defined edges, such edges shall be parallel to the direction of pedestrian flow. The bottom of diagonal curb ramps shall have 48-in (1220-mm) minimum clear space as shown in Fig. 15(c) and (d). If diagonal curb ramps are provided at marked crossings, the 48-in (1220-mm) clear space shall be within the markings (see Fig. 15(c) and (d)). If diagonal curb ramps have flared sides, they shall also have a segment of straight curb at least 24 in (610 mm) long located on each side of the curb ramp and within the marked crossing (see Fig. 15(e)).

4.7.11 Islands. Any raised islands in crossings shall be cut through level with the street or have curb ramps at both sides and a level area at least 48 in (1220 mm) long in the part of the island intersected by the crossings (see Fig. 15(a) and (b)).

*See Appendix for additional information.

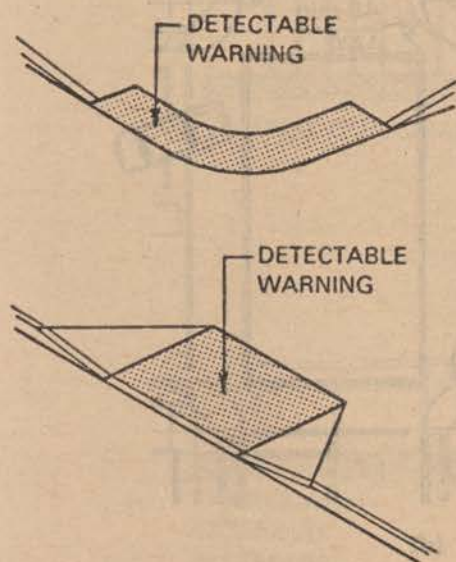


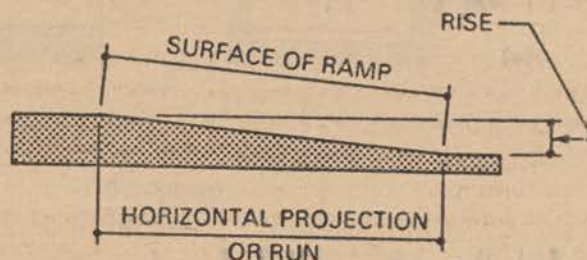
Fig. 14
Warning Signals at Curb Ramps

4.7.12 Uncurbed Intersections. If there is no curb at the intersection of a walk and an adjoining street, parking lot, or busy driveway, then the walk shall have a detectable warning texture complying with 4.27.5 at the edge of the vehicular way.

4.8 Ramps

4.8.1* General. Any part of an accessible route with a slope greater than 1:20 shall be considered a ramp and shall comply with 4.8.

4.8.2* Slope and Rise. The least possible slope shall be used for any ramp. The maximum slope of a ramp in new construction shall be 1:12. The maximum rise for any ramp run shall be 30 in (760 mm) (see Fig. 16). Curb ramps and ramps to be constructed on existing sites or in existing buildings or facilities may have slopes and rises as shown in Table 3 if space limitations prohibit the use of a 1:12 slope or less.



Slope	Maximum Rise		Maximum Horizontal Projection	
	in	mm	ft	m
1:12 to 1:15	30	760	30	9
1:16 to 1:19	30	760	40	12
1:20	30	760	50	15

Fig. 16
Components of a Single Ramp Run and
Sample Ramp Dimensions

Table 3
Allowable Ramp Dimensions for Construction in
Existing Sites, Buildings, and Facilities

Slope*	Maximum Rise		Maximum Run	
	in	mm	ft	m
Steeper than 1:10 but no steeper than 1:8	3	75	2	0.6
Steeper than 1:12 but no steeper than 1:10	6	150	5	1.5

*A slope steeper than 1:8 not allowed.

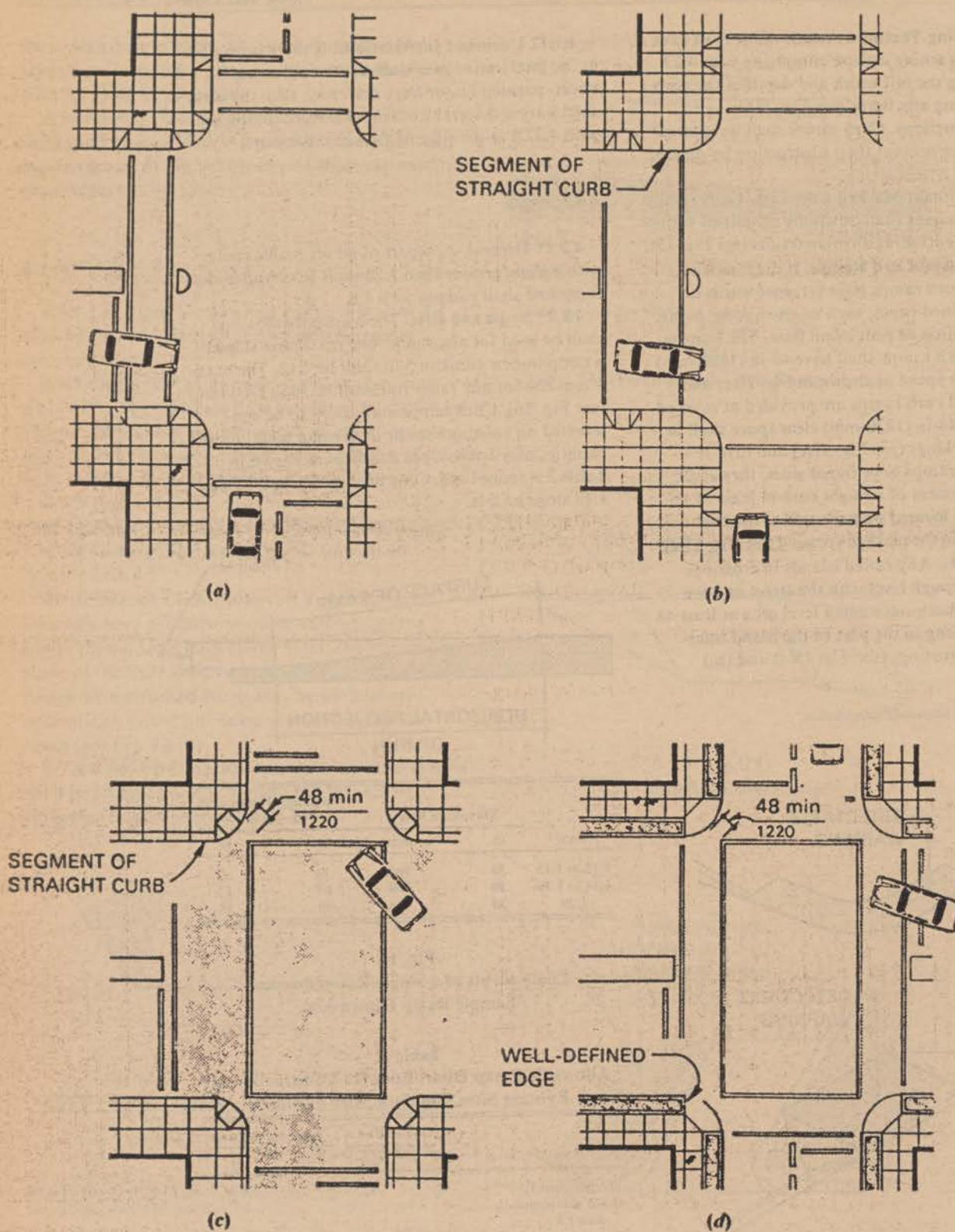


Fig. 15
Curb, Ramps at Marked Crossings

4.8 RAMPS

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4.8.3 Clear Width. The minimum clear width of a ramp shall be 36 in (915 mm) (see Fig. 17).

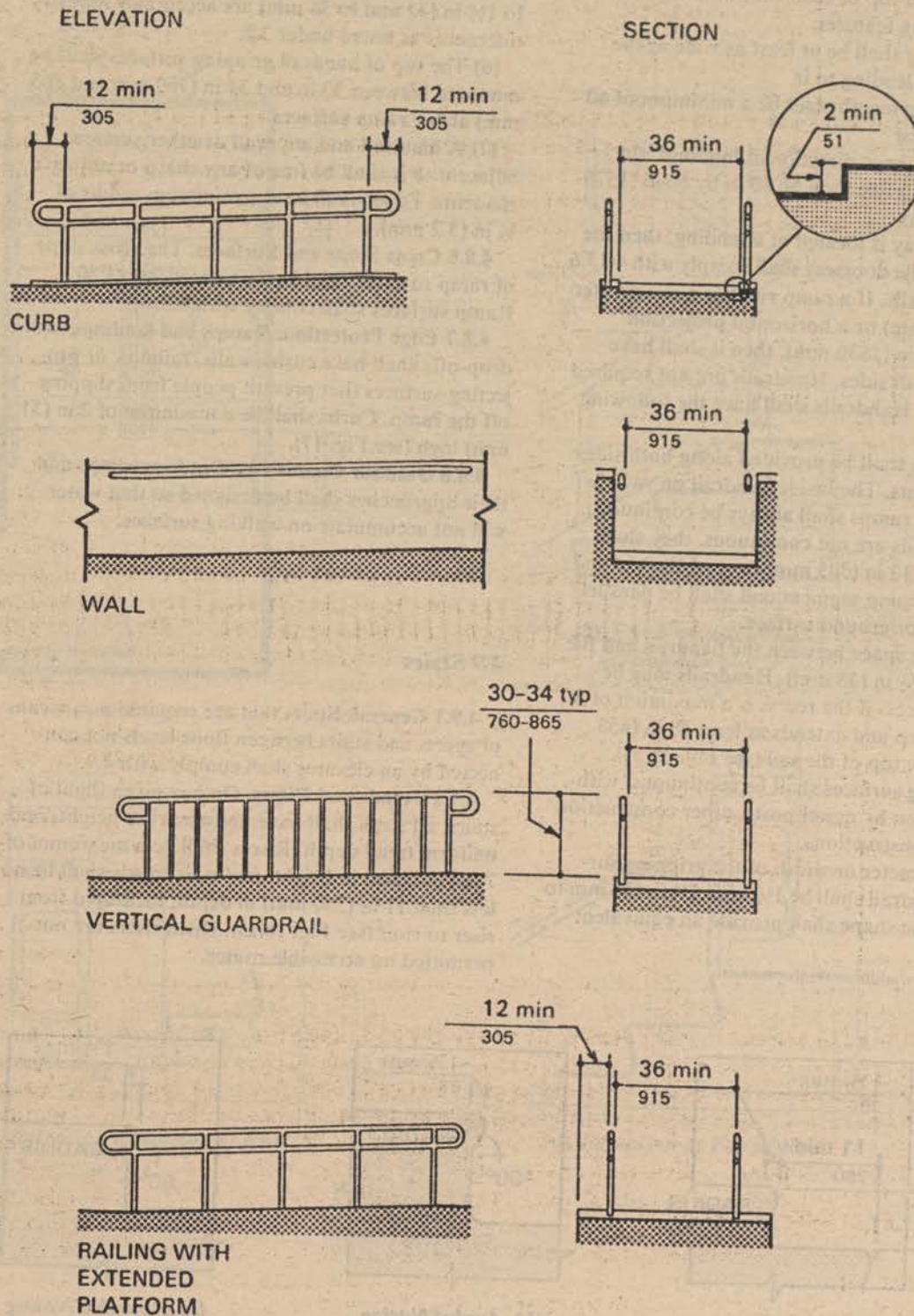


Fig. 17
Examples of Edge Protection and Handrail Extensions

4.8.4 Landings. Ramps shall have level landings at the bottom and top of each run. Landings shall have the following features:

- (1) The landing shall be at least as wide as the widest ramp run leading to it
- (2) The landing length shall be a minimum of 60 in (1525 mm) clear
- (3) If ramps change direction at landings, the minimum landing size shall be 60 in by 60 in (1525 mm by 1525 mm)
- (4) If a doorway is located at a landing, then the area in front of the doorway shall comply with 4.13.6

4.8.5* Handrails. If a ramp run has a rise greater than 6 in (150 mm) or a horizontal projection greater than 72 in (1830 mm), then it shall have handrails on both sides. Handrails are not required on curb ramps. Handrails shall have the following features:

- (1) Handrails shall be provided along both sides of ramp segments. The inside handrail on switch-back or dogleg ramps shall always be continuous.
- (2) If handrails are not continuous, they shall extend at least 12 in (305 mm) beyond the top and bottom of the ramp segment and shall be parallel with the floor or ground surface.
- (3) The clear space between the handrail and the wall shall be 1½ in (38 mm). Handrails may be located in a recess if the recess is a maximum of 3 in (75 mm) deep and extends at least 18 in (455 mm) above the top of the rail (see Fig. 39(d)).
- (4) Gripping surfaces shall be continuous, without interruption by newel posts, other construction elements, or obstructions.
- (5) The diameter or width of the gripping surfaces of a handrail shall be 1¼ in to 1½ in (32 mm to 38 mm), or the shape shall provide an equivalent

gripping surface (see Fig. 39(a), (b), and (c)). Standard pipe sizes designated by the industry as 1¼ in to 1½ in (32 mm to 38 mm) are acceptable industry tolerances as noted under 3.2.

(6) The top of handrail gripping surfaces shall be mounted between 30 in and 34 in (760 mm and 865 mm) above ramp surfaces.

(7) A handrail and any wall or other surface adjacent to it shall be free of any sharp or abrasive elements. Edges shall have a minimum radius of ¼ in (3.2 mm).

4.8.6 Cross Slope and Surfaces. The cross slope of ramp surfaces shall be no greater than 1:50. Ramp surfaces shall comply with 4.5.

4.8.7 Edge Protection. Ramps and landings with drop-offs shall have curbs, walls, railings, or projecting surfaces that prevent people from slipping off the ramp. Curbs shall be a minimum of 2 in (51 mm) high (see Fig. 17).

4.8.8 Outdoor Conditions. Outdoor ramps and their approaches shall be designed so that water will not accumulate on walking surfaces.

4.9 Stairs

4.9.1 General. Stairs that are required as a means of egress and stairs between floor levels not connected by an elevator shall comply with 4.9.

4.9.2 Treads and Risers. On any given flight of stairs, all steps shall have uniform riser heights and uniform tread depth. Risers shall be a maximum of 7 in (180 mm) in height, and stair treads shall be no less than 11 in (280 mm) in depth, measured from riser to riser (see Fig. 18(a)). Open risers are not permitted on accessible routes.

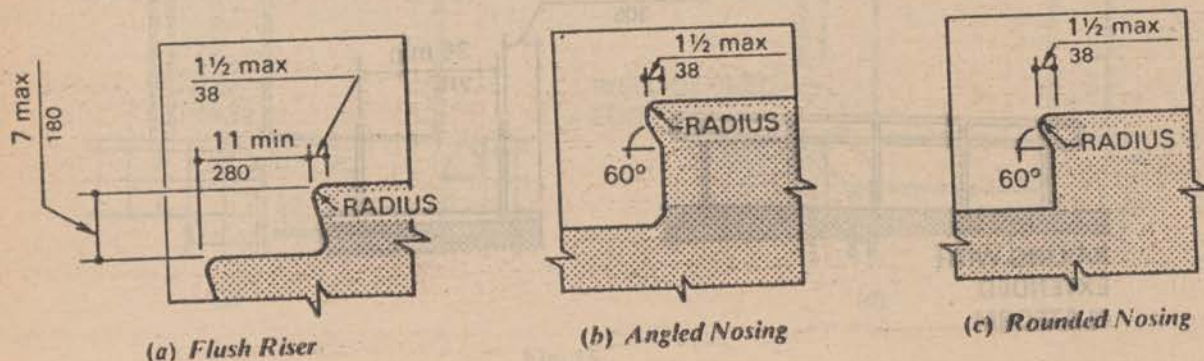


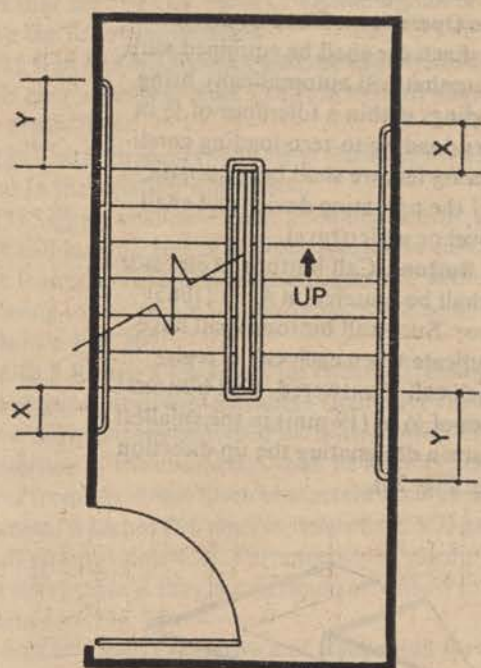
Fig. 18

Usable Tread Width and Examples of Acceptable Nosings

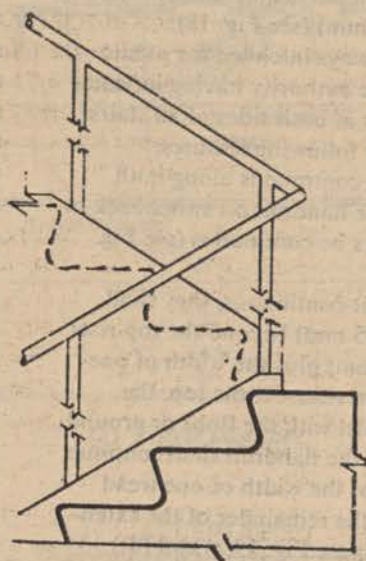
*See Appendix for additional information.

4.9 STAIRS

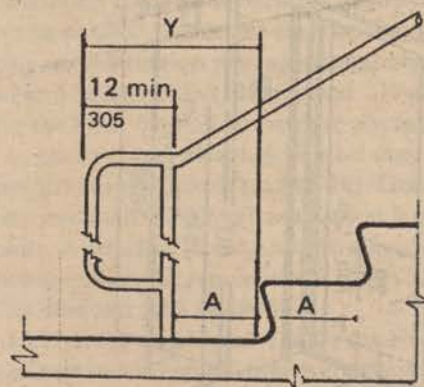
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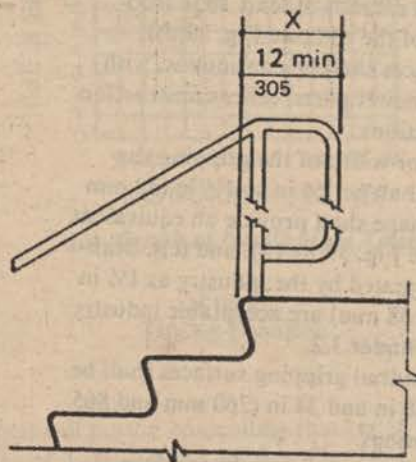
(a) Plan



(b) Elevation of Center Handrail



(c) Extension at Bottom of Run



(d) Extension at Top of Run

Fig. 19
Stair Handrails

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4.10 ELEVATORS

4.9.3 Nosings. The undersides of nosings shall not be abrupt. The radius of curvature at the leading edge of the tread shall be no greater than $\frac{1}{2}$ in (13 mm). Risers shall be sloped or the underside of the nosing shall have an angle not less than 60 degrees from the horizontal. Nosings shall project no more than $1\frac{1}{2}$ in (38 mm) (see Fig. 18).

4.9.4 Handrails. Stairways intended for public use or as specified by the authority having jurisdiction shall have handrails at both sides of all stairs. Handrails shall have the following features:

(1) Handrails shall be continuous along both sides of stairs. The inside handrail on switchback or dogleg stairs shall always be continuous (see Fig. 19(a) and (b)).

(2) If handrails are not continuous, they shall extend at least 12 in (305 mm) beyond the top riser and at least 12 in (305 mm) plus the width of one tread beyond the bottom riser. At the top, the extension shall be parallel with the floor or ground surface. At the bottom, the handrail shall continue to slope for a distance of the width of one tread from the bottom riser; the remainder of the extension shall be horizontal (see Fig. 19(c) and (d)). Handrail extensions shall comply with 4.4.

(3) The clear space between the handrail and the wall shall be $1\frac{1}{2}$ in (38 mm). Handrails may be located in a recess if the recess is a maximum of 3 in (75 mm) deep and extends at least 18 in (455 mm) above the top of the rail (see Fig. 39(d)).

(4) Gripping surfaces shall be continuous, without interruption by newel posts, other construction elements, or obstructions.

(5) The diameter or width of the gripping surfaces of a handrail shall be $1\frac{1}{4}$ in to $1\frac{1}{2}$ in (32 mm to 38 mm), or the shape shall provide an equivalent gripping surface (see Fig. 39(a), (b), and (c)). Standard pipe sizes designated by the industry as $1\frac{1}{4}$ in to $1\frac{1}{2}$ in (32 mm to 38 mm) are acceptable industry tolerances as noted under 3.2.

(6) The top of handrail gripping surfaces shall be mounted between 30 in and 34 in (760 mm and 865 mm) above stair nosings.

(7) A handrail and any wall or other surface adjacent to it shall be free of any sharp or abrasive elements. Edges shall have a minimum radius of $\frac{1}{8}$ in (3.2 mm).

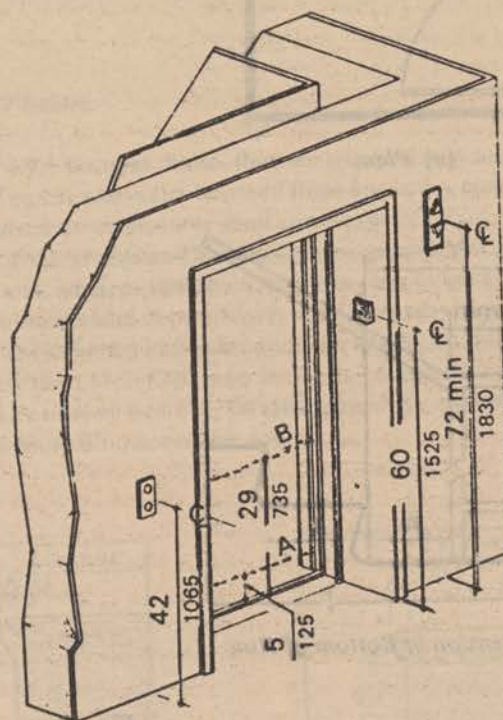
4.10 Elevators

4.10.1 General. Passenger elevators on accessible routes shall comply with ANSI/ASME A17.1-1984 and A17.1a-1985. This standard does not preclude

the use of residential elevators or wheelchair lifts when appropriate and approved by administrative authorities. Freight elevators shall not be considered as meeting the requirements of this section unless the only elevators provided are used as combination passenger and freight elevators.

4.10.2 Automatic Operations. Elevator operation shall be automatic. Each car shall be equipped with a self-leveling feature that will automatically bring the car to floor landings within a tolerance of $\frac{1}{2}$ in (13 mm) under rated loading to zero loading conditions. This self-leveling feature shall be automatic and independent of the operating device and shall correct for overtravel or undertravel.

4.10.3 Hall Call Buttons. Call buttons in elevator lobbies and halls shall be centered at 42 in (1065 mm) above the floor. Such call buttons shall have visual signals to indicate when each call is registered and when each call is answered. Call buttons shall be a minimum of $\frac{1}{4}$ in (19 mm) in the smallest dimension. The button designating the up direction shall be on top (see Fig. 20).



NOTE: The automatic door reopening device is activated if an object passes through either line A or line B. Line A and line B represent the vertical locations of the door reopening device not requiring contact.

Fig. 20
Hoistway and Elevator Entrances

4.10 ELEVATORS

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4.10.4 Hall Lanterns. A visible and audible signal shall be provided at each hoistway entrance to indicate which car is answering a call. Audible signals shall sound once for the up direction and twice for the down direction, or shall have verbal annunciators that say "up" or "down." Visible signals shall have the following features:

(1) Hall lantern fixtures shall be mounted so that their centerline is at least 72 in (1830 mm) above the lobby floor.

(2) Visual elements shall be at least 2½ in (63 mm) in the smallest dimension.

(3) Signals shall be visible from the vicinity of the hall call button. In-car lanterns located in cars, visible from the vicinity of hall call buttons, and conforming to the above requirements, shall be acceptable (see Fig. 20).

4.10.5 Raised Characters on Hoistway Entrances. All elevator hoistway entrances shall have raised floor designations provided on both jambs. The centerline of the characters shall be 60 in (1525 mm) from the floor. Such characters shall be a nominal 2 inches (51 mm) in height (see 3.2) and shall comply with 4.28. Permanently applied plates are acceptable if they are permanently fixed to the jambs (see Fig. 20).

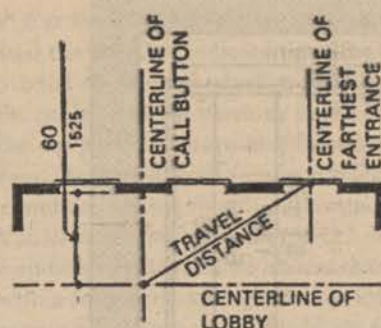
4.10.6* Door Protective and Reopening Device. Elevator doors shall open and close automatically. They shall be provided with a reopening device that will stop and reopen a car door and hoistway door automatically if the door becomes obstructed by an object or person. The device shall be activated by sensing an obstruction passing through the door between 5 in and 29 in (125 mm and 735 mm) above the floor. It shall not require physical contact to be activated, although contact may occur before the door reverses (see Fig. 20). Door reopening devices shall remain effective for at least 20 seconds. After such interval, doors may close in accordance with the requirements of ANSI, ASME A17.1-1984 and A17.1a-1985.

4.10.7* Door and Signal Timing for Hall Calls. The minimum acceptable time from notification that a car is answering a call until the doors of that car start to close shall be calculated from one of the following equations:

$$T = \frac{D}{1.5 \text{ ft/s}} \text{ or } T = \frac{D}{455 \text{ mm/s}}$$

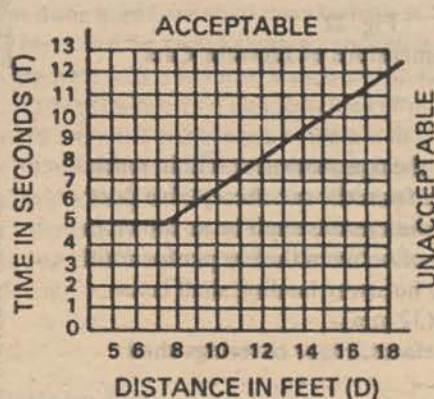
where T = total time in seconds and D = distance (in feet or millimeters) from a point in the lobby or corridor 60 in (1525 mm) directly in front of the

*See Appendix for additional information.



Travel Distance		Time (s)
ft	m	
0 7.5	0 2.3	5
10	3	7
15	4.5	10
20	6	13

(a) Travel Distance



(b) Graph of Notification Time

Fig. 21
Timing Equation

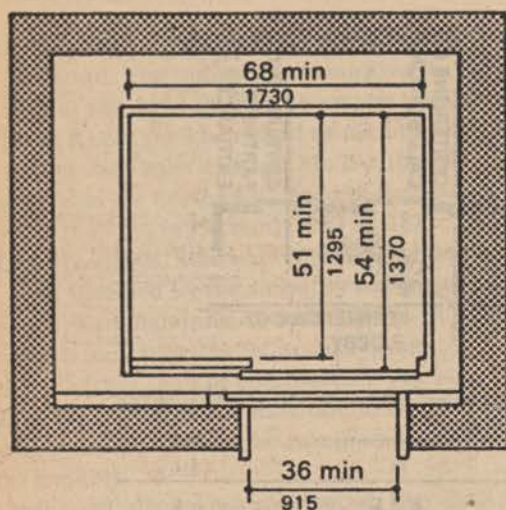
farthest call button controlling that car to the centerline of its hoistway door (see Fig. 21).

The minimum acceptable notification time shall be 5 seconds.

For cars with in-car lanterns, T begins when the lantern is visible from the vicinity of the hall call buttons and an audible signal is sounded.

4.10.8 Door Delay for Car Calls. The minimum time for elevator doors to remain fully open in response to a car call shall be 3 seconds.

4.10.9 Floor Plan of Elevator Cars. The floor area of elevator cars shall provide space for wheel-



NOTE: Elevator cars with a minimum width less than that shown above, but no less than 54 in (1370 mm), are allowed for elevators with capacities of less than 2000 lb. A center opening door application necessitates increasing the 68-in (1730-mm) dimension to 80 in (2030 mm).

Fig. 22
Minimum Dimensions of Elevator Cars

chair users to enter the car, maneuver within reach of controls, and exit from the car. Acceptable door opening and inside dimensions shall be as shown in Fig. 22. The clearance between the car platform sill and the edge of any hoistway landing shall be no greater than 1/4 in (32 mm).

4.10.10 Floor Surfaces. Floor coverings shall comply with 4.5.

4.10.11 Illumination Levels. The level of illumination at the car controls, platform, and car threshold and landing sill shall be at least 5 footcandles (53.8 lux).

4.10.12* Car Controls. Elevator control panels shall have the following features:

(1) **Buttons.** All control buttons shall be at least 1/4 in (19 mm) in their smallest dimension. They may be raised, flush, or recessed.

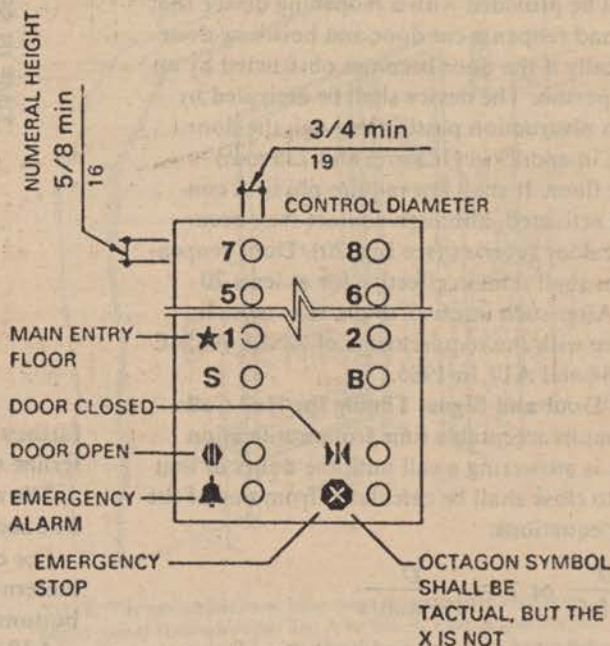
Buttons shall be arranged with numbers in ascending order as shown in Fig. 23(a) and shall read from left to right.

(2) **Tactile and Visual Control Indicators.** All control buttons shall be designated by raised standard alphabet characters for letters, arabic characters for numerals, or standard symbols as shown in

Fig. 23(a), and as required in ANSI ASME A17.1-1984 and A17.1a-1985. Raised characters and symbols shall comply with 4.28. The call button for the main entry floor shall be designated by a raised star at the left of the floor designation (see Fig. 23(a)). All raised designations for control buttons shall be placed immediately to the left of the button to which they apply. Applied plates, permanently attached, are an acceptable means to provide raised control designations. Floor buttons shall be provided with visual indicators to show when each call is registered. The visual indicators shall be extinguished when each call is answered.

(3) **Height.** All floor buttons shall be no higher than 54 in (1370 mm) above the floor for side approach and 48 in (1220 mm) for front approach. Emergency controls, including the emergency alarm and emergency stop, shall be grouped at the bottom of the panel and shall have their centerlines no less than 35 in (890 mm) above the floor (see Fig. 23(a) and (b)).

(4) **Location.** Controls shall be located on a front wall if cars have center opening doors, and at the side wall or at the front wall next to the door if cars have side opening doors (see Fig. 23(c) and (d)).



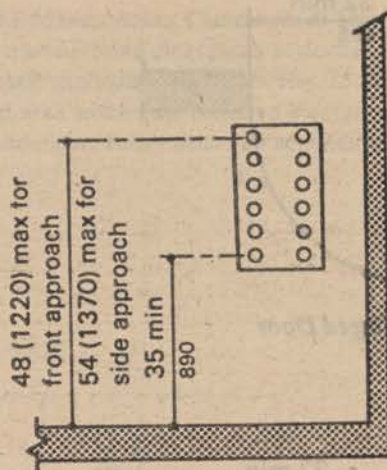
(a) Panel Detail

Fig. 23
Car Controls

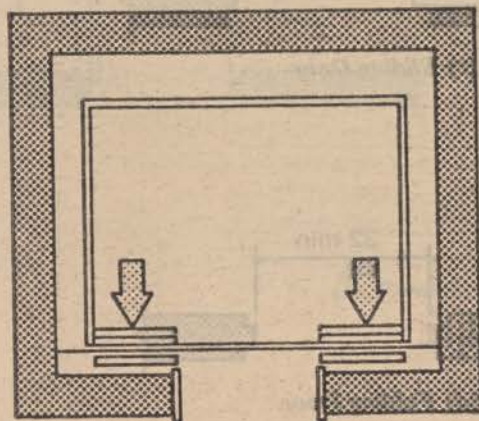
*See Appendix for additional information.

4.12 WINDOWS

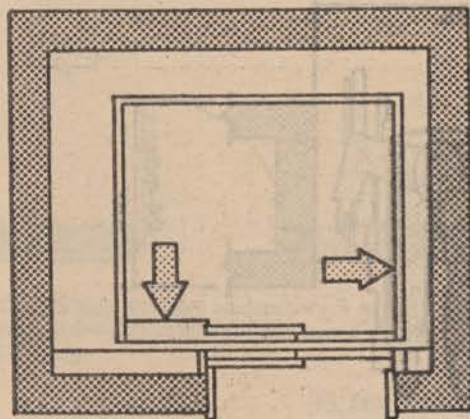
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(b) Control Height



(c) Alternate Locations of Panel with Center Opening Door



(d) Alternate Locations of Panel with Side Opening Door

Fig. 23 Car Controls (Continued)

4.10.13* Car Position Indicators. In elevator cars, a visual car position indicator shall be provided above the car control panel or over the door to show the position of the elevator in the hoistway. As the car passes or stops at a floor served by the elevators, the corresponding numeral shall illuminate and an audible signal shall sound. Numerals shall be a minimum of $\frac{1}{2}$ in (13 mm) high. The audible signal shall be no less than 20 decibels with a frequency no higher than 1500 Hz. An automatic verbal announcement of the floor number at which a car stops or at which a car passes may be substituted for the audible signal.

4.10.14* Emergency Communications. If provided, car emergency signaling devices between the elevator and a point outside the hoistway shall comply with ANSI, ASME A17.1-1984 and A17.1a-1985. The highest operable part of a two-way communication system shall be a maximum of 54 in (1370 mm) above the floor for side approach and 48 in (1220 mm) for front approach. If the system is located in a closed compartment, the compartment door hardware shall comply with 4.25. It shall be identified by raised symbols and lettering complying with 4.28 and located adjacent to the device. If the system uses a handset, then the length of the cord from the panel to the handset shall be at least 29 in (735 mm). The car emergency signaling device shall not be limited to voice communication. If instructions for use are provided, essential information shall be presented in both tactile and visual form.

4.11 Platform Lifts

4.11.1 General. Platform lifts complying with ANSI ASME A17.1-1984 and A17.1a-1985 or the applicable safety regulations of administrative authorities having jurisdiction may be used as part of an accessible route.

4.11.2 Requirements. Platform lifts on an accessible route shall comply with 4.2.4, 4.5, and 4.25.

4.12 Windows

4.12.1 General. Windows intended to be operated by occupants in accessible spaces shall comply with 4.12.

*See Appendix for additional information.

4.12.2 Window Hardware. Windows requiring pushing, pulling, or lifting to open (for example, double-hung, sliding, or casement and awning units without cranks) shall require no more than 5 lbf (22.2 N) to open or close. Locks, cranks, and other window hardware shall comply with 4.25.

4.13 Doors

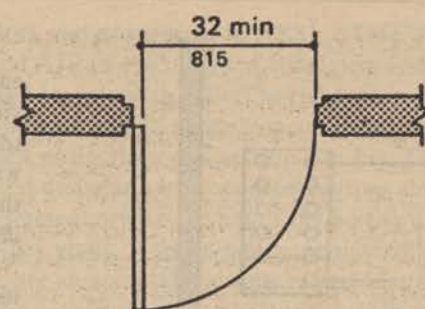
4.13.1 General. Doors to accessible spaces and elements and along accessible routes shall comply with the requirements of 4.13.

4.13.2 Revolving Doors and Turnstiles. Revolving doors or turnstiles shall comply with 4.13 or shall not be the only means of passage at an accessible entrance or along an accessible route.

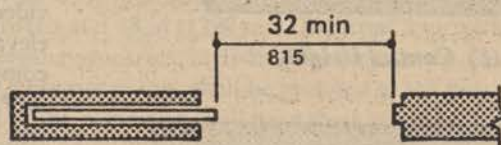
4.13.3 Gates. Gates, including ticket gates, shall meet all applicable specifications of 4.13.

4.13.4 Double-Leaf Doorways. If doorways have two independently operated door leaves, then at least one leaf shall meet the specifications in 4.13.5 and 4.13.6. That leaf shall be an active leaf.

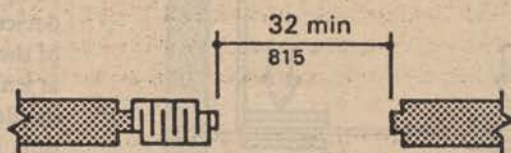
4.13.5 Clear Width. Doorways intended for user passage shall have a minimum clear opening of 32 in (815 mm) with the door open 90 degrees, measured between the face of the door and the stop (see Fig. 24(a), (b), (c), and (d)). Openings more than 24 in (610 mm) in depth shall comply with 4.2.1 and 4.3.3 (see Fig. 24(e)).



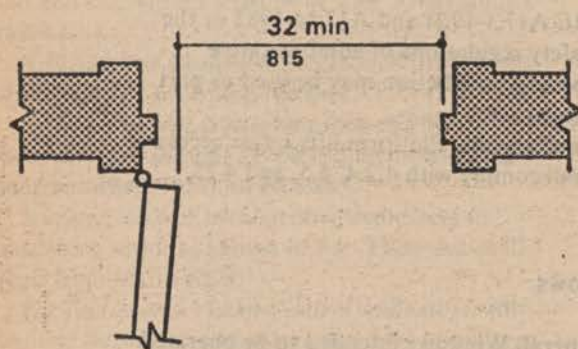
(b) Hinged Door



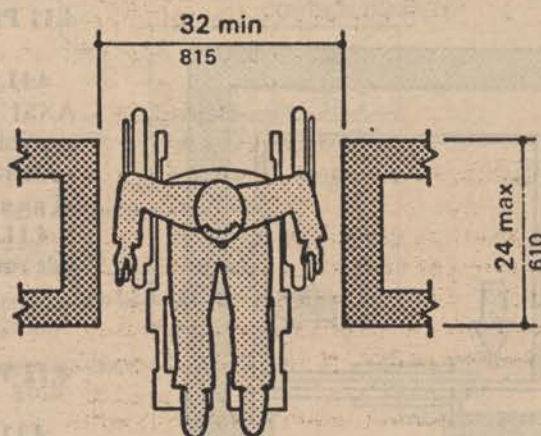
(c) Sliding Door



(d) Folding Door



(a) Detail



(e) Maximum Doorway Depth

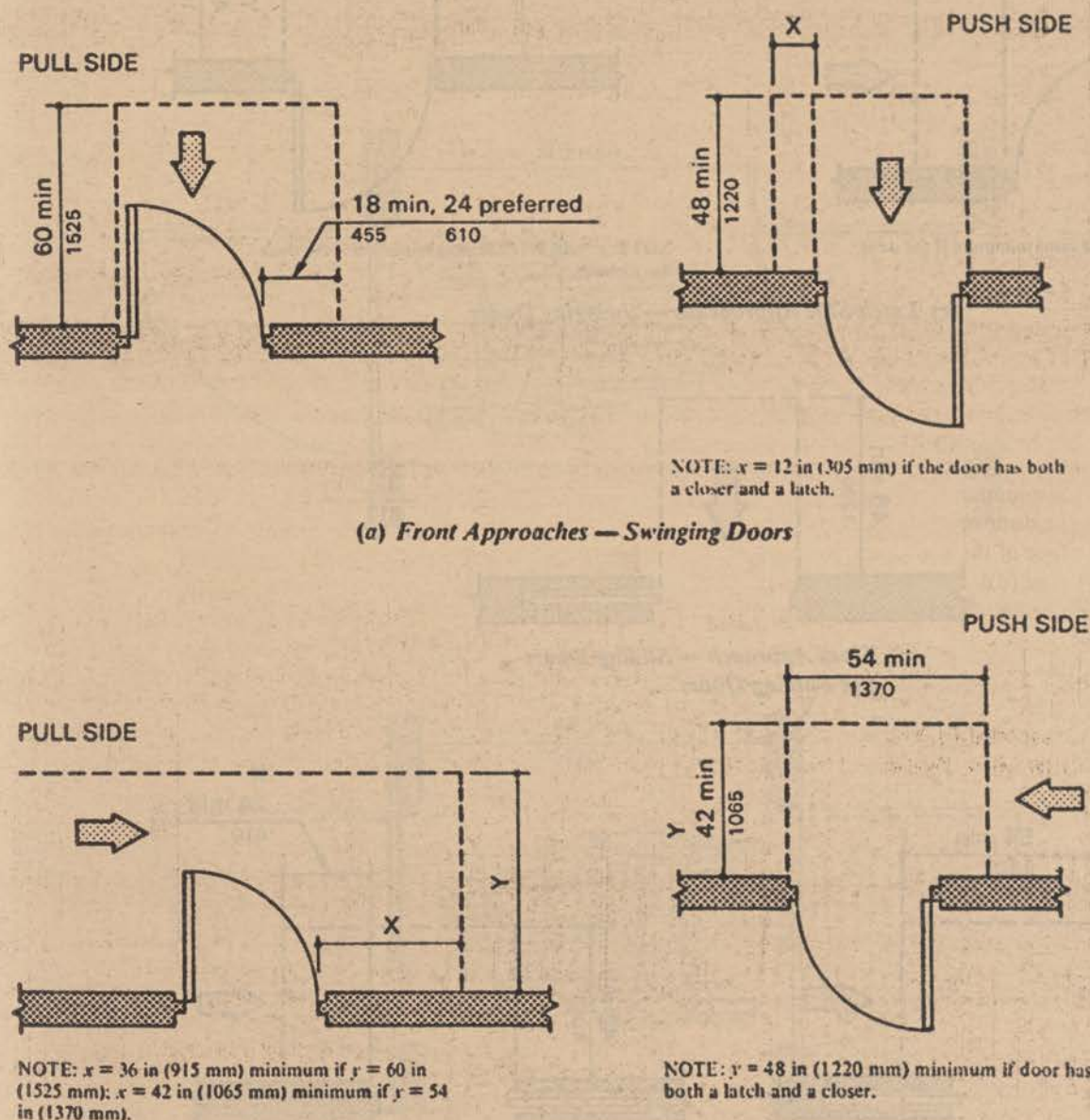
Fig. 24
Clear Doorway Width and Depth

4.13 DOORS

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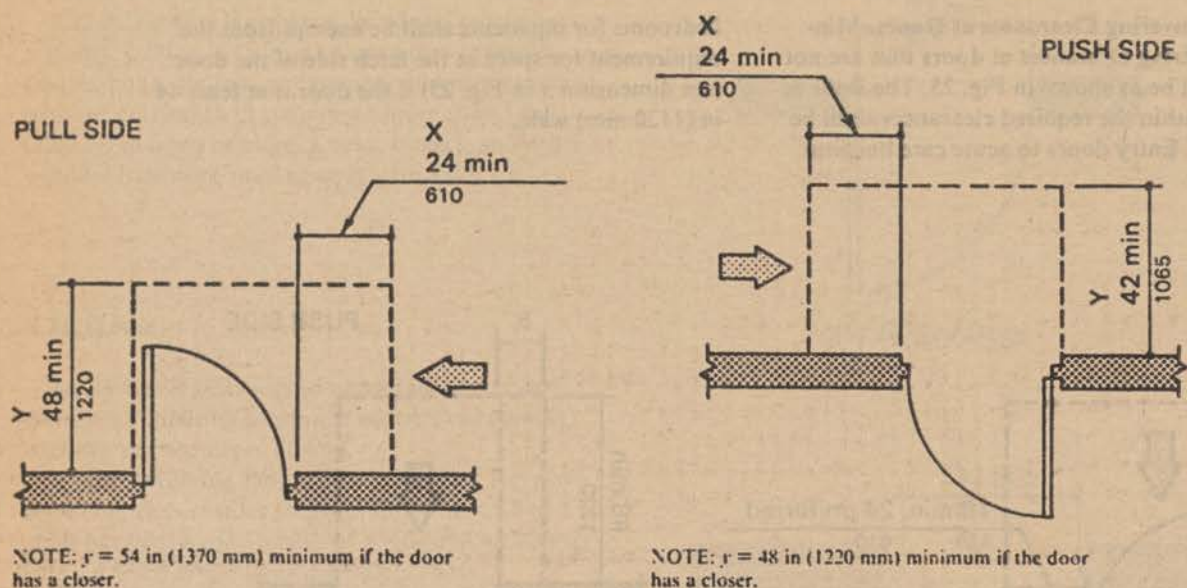
4.13.6 Maneuvering Clearances at Doors. Minimum maneuvering clearances at doors that are not automatic shall be as shown in Fig. 25. The floor or ground area within the required clearances shall be level and clear. Entry doors to acute care hospital

bedrooms for inpatients shall be exempt from the requirement for space at the latch side of the door (see dimension x in Fig. 25) if the door is at least 44 in (1120 mm) wide.

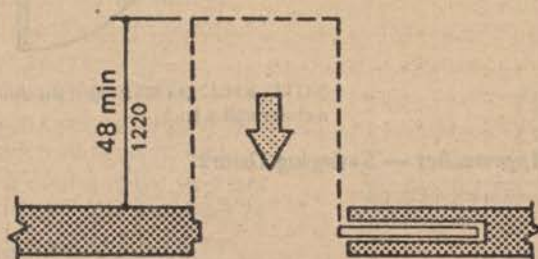
**(b) Hinge-Side Approaches — Swinging Doors**

NOTE: All doors in alcoves shall comply with the clearances for front approaches.

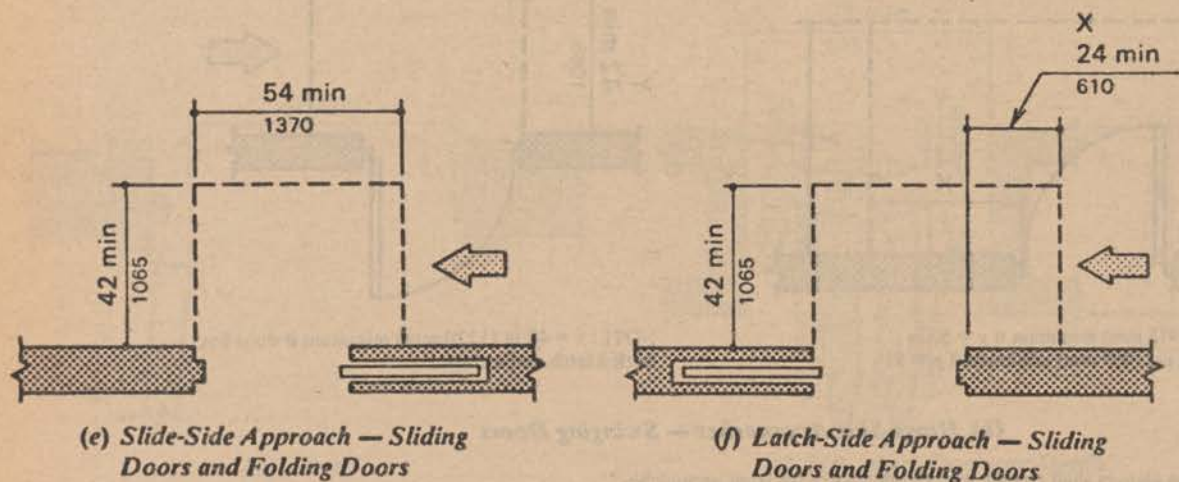
Fig. 25
Maneuvering Clearances at Doors



(c) Latch-Side Approaches — Swinging Doors



(d) Front Approach — Sliding Doors and Folding Doors



NOTE: All doors in alcoves shall comply with the clearances for front approaches.

Fig. 25 Maneuvering Clearances at Doors (Continued)

4.13 DOORS

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4.13.7 Two Doors in Series. The minimum space between two hinged or pivoted doors in series shall be 48 in (1220 mm) plus the width of any door swinging into the space. Doors in series shall swing either in the same direction or away from the space between the doors (see Fig. 26).

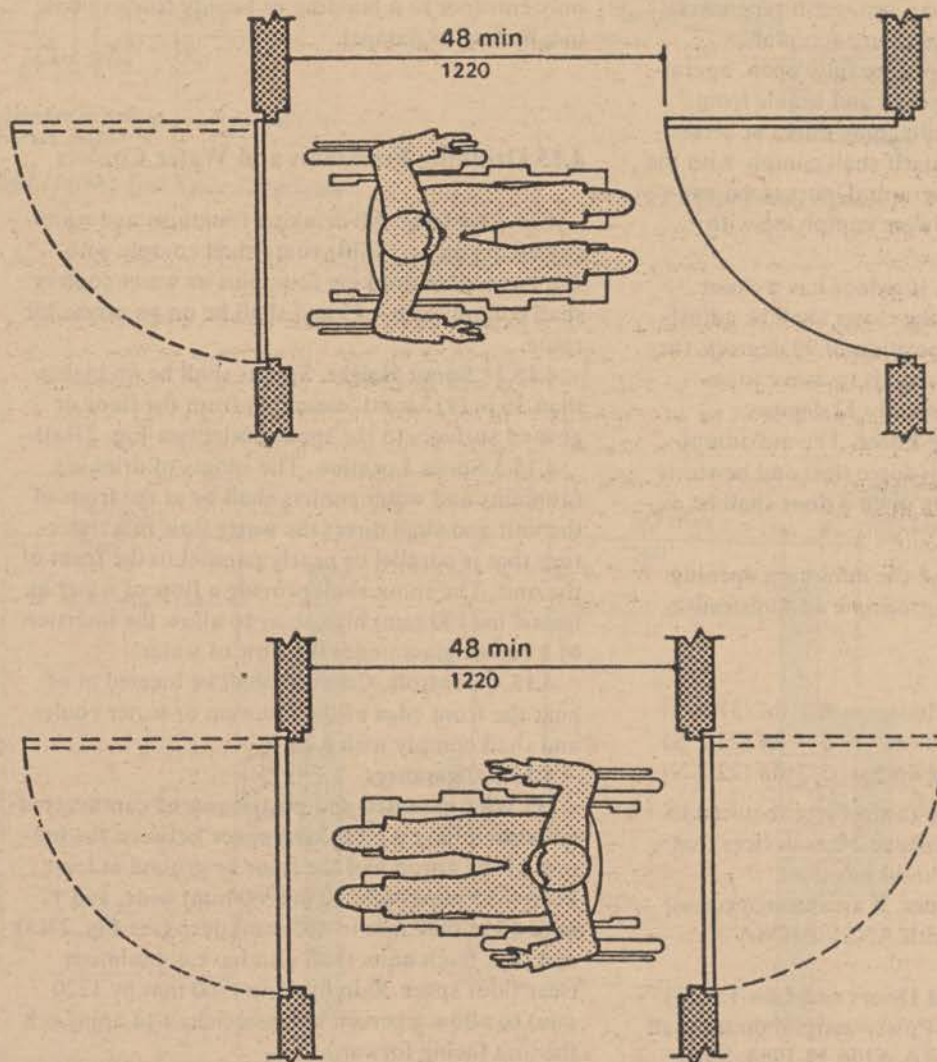


Fig. 26
Two Hinged Doors in Series

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4.15 DRINKING FOUNTAINS AND WATER COOLERS

4.13.8* Thresholds at Doorways. Thresholds at doorways shall not exceed $\frac{3}{4}$ in (19 mm) in height for exterior residential sliding doors or $\frac{1}{2}$ in (13 mm) for other types of doors. Raised thresholds and floor level changes at accessible doorways shall be beveled with a slope no greater than 1:2 (see 4.5.2).

4.13.9* Door Hardware. Handles, pulls, latches, locks, and other operating devices on accessible doors shall have a shape that is easy to grasp with one hand and does not require tight grasping, tight pinching, or twisting of the wrist to operate. They shall be mounted within reach ranges specified in 4.2. Lever-operated mechanisms, push-type mechanisms, and U-shaped handles are acceptable designs. When sliding doors are fully open, operating hardware shall be exposed and usable from both sides. In dwelling units, only doors at accessible entrances to the unit itself shall comply with the requirements of this paragraph. Doors to hazardous areas shall have hardware complying with 4.27.3.

4.13.10* Door Closers. If a door has a closer, then the sweep period of the closer shall be adjusted so that from an open position of 90 degrees, the door will take at least 3 seconds to move to an open position of approximately 12 degrees.

4.13.11* Door-Opening Force. The maximum force, expressed in pounds-force (lbf) and newtons (N), for pushing or pulling open a door shall be as follows:

(1) Fire doors shall have the minimum opening force allowable by the appropriate administrative authority.

(2) Other doors:

- (a) Exterior hinged doors: 8.5 lbf (37.8 N)
- (b) Interior hinged doors: 5 lbf (22.2 N)
- (c) Sliding or folding doors: 5 lbf (22.2 N)

These forces do not apply to the force required to retract latch bolts or disengage other devices that may hold the door in a closed position.

4.13.12 Automatic Doors. If an automatic door is used, it shall comply with ANSI BHMA A156.10-1985.

4.13.13 Power-Assisted Doors and Low-Energy Power-Operated Doors. Power-assisted doors shall comply with ANSI/BHMA A156.19-1984. Such doors shall not open to back check faster than 3 seconds and shall require no more than 15 lbf (66.6 N) to stop door movement.

4.14 Entrances

4.14.1 General. Entrances to a building or facility that are part of an accessible route shall comply with 4.3. Such entrances shall be connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, and to public streets or sidewalks if available (see 4.3.2(1)). They shall also be connected by an accessible route to all accessible spaces or elements within the building or facility.

4.14.2 Service Entrances. A service entrance shall not be the sole accessible entrance unless it is the only entrance to a building or facility (for example in a factory or garage).

4.15 Drinking Fountains and Water Coolers

4.15.1 General. All drinking fountains and water coolers on an accessible route shall comply with 4.4. Accessible drinking fountains or water coolers shall comply with 4.15 and shall be on an accessible route.

4.15.2* Spout Height. Spouts shall be no higher than 36 in (915 mm), measured from the floor or ground surfaces to the spout outlet (see Fig. 27(a)).

4.15.3 Spout Location. The spouts of drinking fountains and water coolers shall be at the front of the unit and shall direct the water flow in a trajectory that is parallel or nearly parallel to the front of the unit. The spout shall provide a flow of water at least 4 in (100 mm) high so as to allow the insertion of a cup or glass under the flow of water.

4.15.4 Controls. Controls shall be located at or near the front edge of the fountain or water cooler and shall comply with 4.25.4.

4.15.5 Clearances

(1) Wall-mounted and post-mounted cantilevered units shall have a clear knee space between the bottom of the apron and the floor or ground at least 27 in (685 mm) high, 30 in (760 mm) wide, and 17 in to 19 in (430 mm to 485 mm) deep (see Fig. 27(a) and (b)). Such units shall also have a minimum clear floor space 30 in by 48 in (760 mm by 1220 mm) to allow a person in a wheelchair to approach the unit facing forward.

(2) Free-standing or built-in units not having a clear space under them shall have a clear floor space at least 30 in by 48 in (760 mm by 1220 mm) that allows a person in a wheelchair to make a parallel approach to the unit (see Fig. 27(c) and (d)). This clear floor space shall comply with 4.2.4.

*See Appendix for additional information.

4.15 DRINKING FOUNTAINS AND WATER COOLERS

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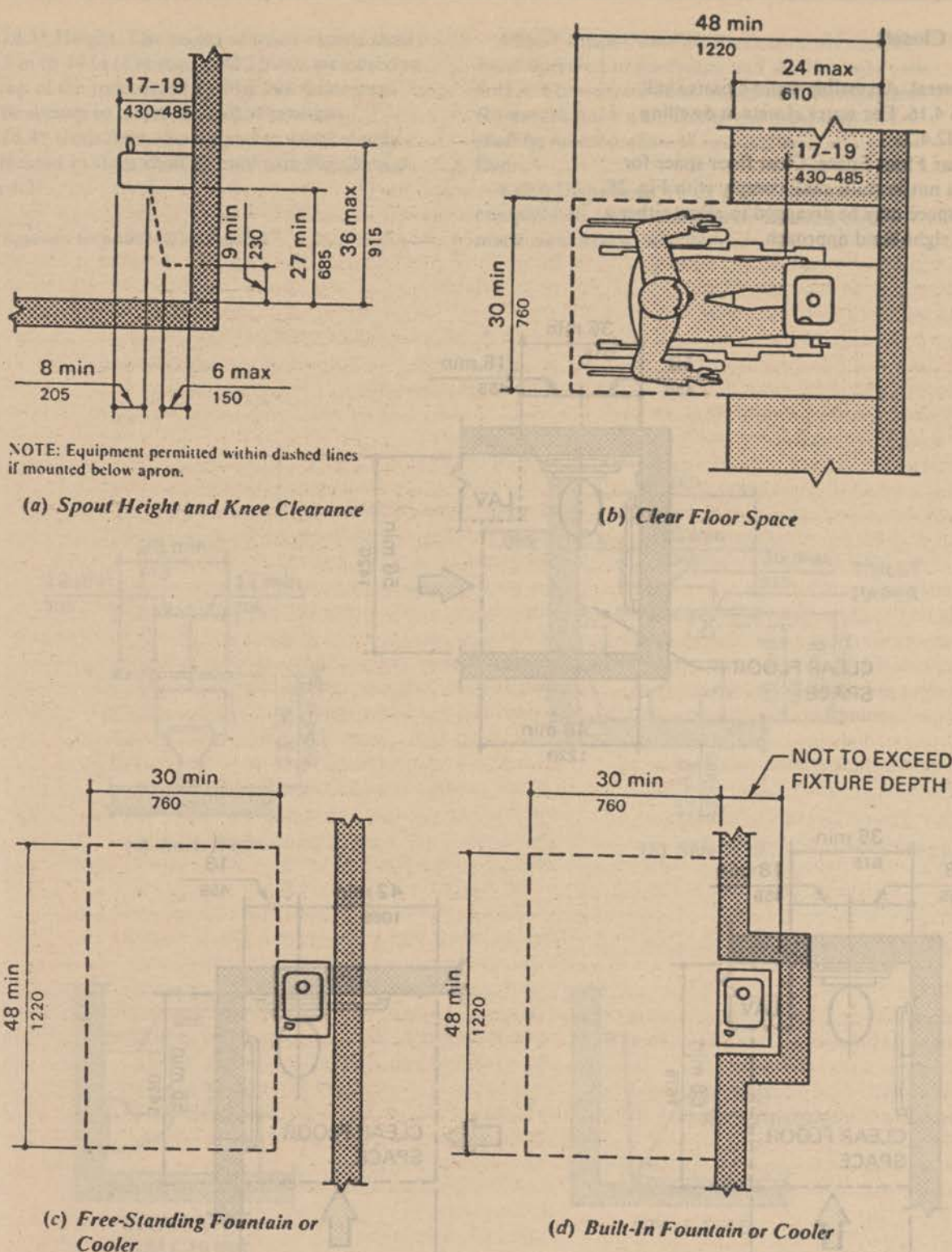


Fig. 27
Drinking Fountains and Water Coolers

4.16 Water Closets

4.16.1 General. Accessible water closets shall comply with 4.16. For water closets in dwelling units, see 4.32.4.2.

4.16.2 Clear Floor Space. Clear floor space for water closets not in stalls shall comply with Fig. 28. Clear floor space may be arranged to allow either a left-hand or right-hand approach.

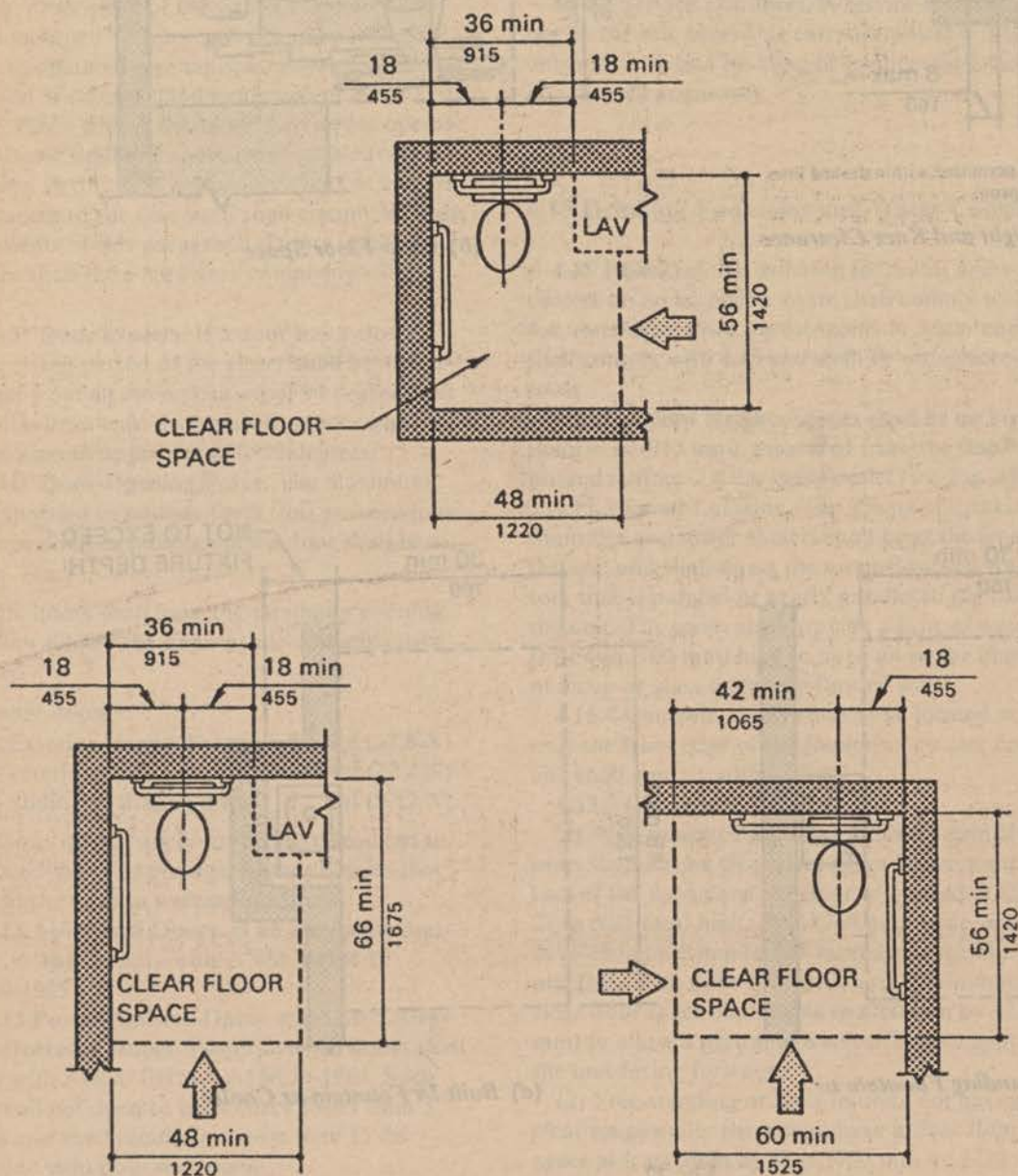


Fig. 28
Clear Floor Space at Water Closets

4.16 WATER CLOSETS

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4.16.3* Height. The height of water closets shall be 17 in to 19 in (430 mm to 485 mm), measured to the top of the toilet seat (see Fig. 29). Seats shall not be sprung to return to a lifted position.

4.16.4* Grab Bars. Grab bars for water closets not located in stalls shall comply with Fig. 29 and with 4.24.

*See Appendix for additional information.

4.16.5* Flush Controls. Flush controls shall be hand operated or automatic and shall comply with 4.25.4. Controls for flush valves shall be mounted for use from the wide side of the toilet stall and shall be no more than 44 in (1120 mm) above the floor.

4.16.6 Dispensers. Toilet paper dispensers shall comply with 4.25.4 and shall be installed within reach, as shown in Fig. 29(b).

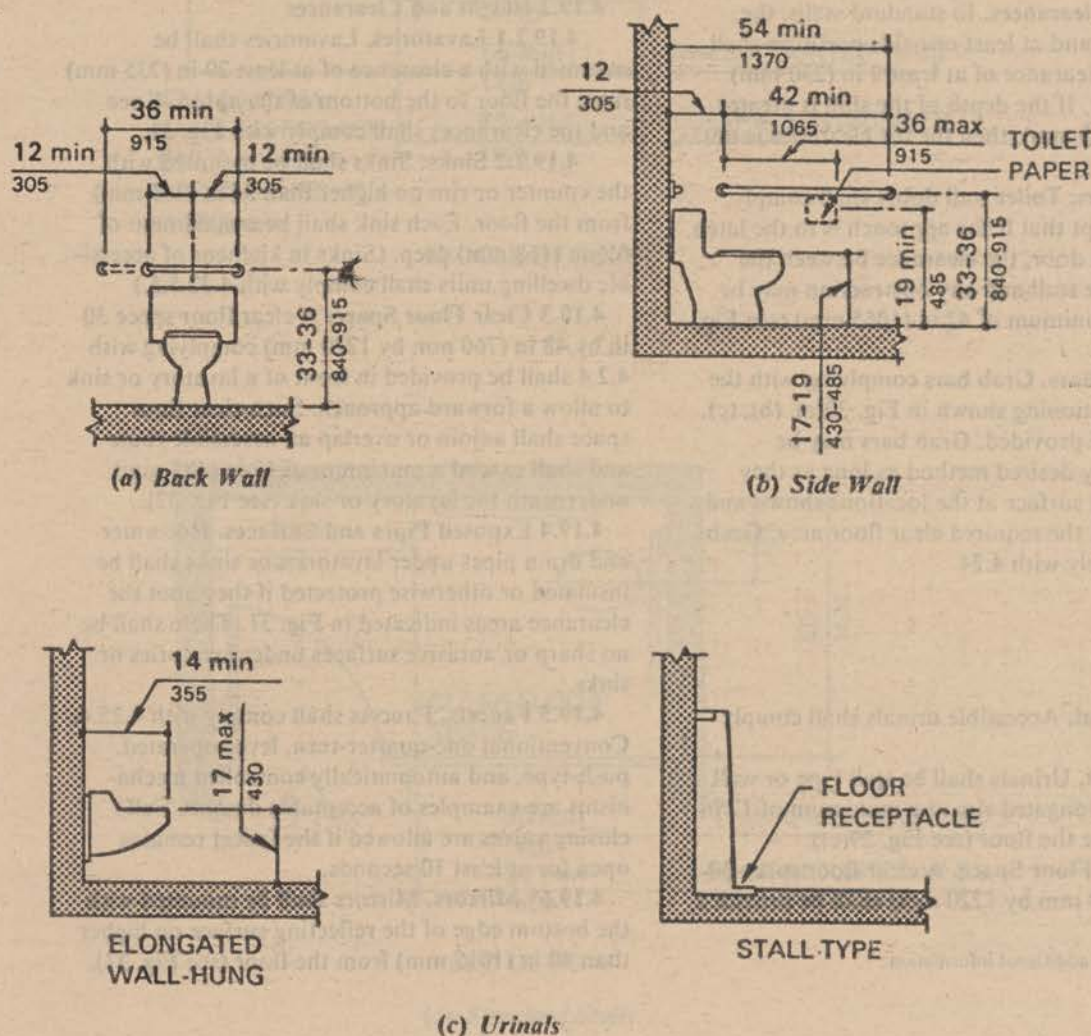


Fig. 29
Water Closets and Urinals

4.17 Toilet Stalls

4.17.1 General. Accessible toilet stalls shall be on an accessible route and shall comply with the requirements of 4.17.

4.17.2 Water Closets. Water closets in accessible stalls shall comply with 4.16.

4.17.3 Size and Arrangement. The size and arrangement of toilet stalls shall comply with either Fig. 30(a) or (b). Toilet stalls with a minimum depth of 56 in (1420 mm) (see Fig. 30(a)) or 66 in (1675 mm) (see Fig. 30(b)) shall have wall-mounted water closets. If the depth of toilet stalls is increased at least 3 in (75 mm), then a floor-mounted water closet may be used. Arrangements shown for stalls may be reversed to allow either a left-hand or a right-hand approach.

4.17.4 Toe Clearances. In standard stalls, the front partition and at least one side partition shall provide a toe clearance of at least 9 in (230 mm) above the floor. If the depth of the stall is greater than 60 in (1525 mm), then the toe clearance is not required.

4.17.5* Doors. Toilet stall doors shall comply with 4.13, except that if the approach is to the latch side of the stall door, the clearance between the door side of the stall and any obstruction may be reduced to a minimum of 42 in (1065 mm) (see Fig. 30).

4.17.6 Grab Bars. Grab bars complying with the length and positioning shown in Fig. 30(a), (b), (c), and (d) shall be provided. Grab bars may be mounted by any desired method as long as they have a gripping surface at the locations shown and do not obstruct the required clear floor area. Grab bars shall comply with 4.24.

4.18 Urinals

4.18.1 General. Accessible urinals shall comply with 4.18.

4.18.2 Height. Urinals shall be stall type or wall hung with an elongated rim at a maximum of 17 in (430 mm) above the floor (see Fig. 29(c)).

4.18.3 Clear Floor Space. A clear floor space 30 in by 48 in (760 mm by 1220 mm) shall be provided

in front of urinals to allow forward approach. This clear space shall adjoin or overlap an accessible route and shall comply with 4.2.4. Privacy shields allowing less than 30 in (760 mm) clear width shall not extend beyond the front edge of the urinal rim.

4.18.4 Flush Controls. Flush controls shall be hand operated or automatic, shall comply with 4.25.4, and shall be mounted no more than 44 in (1120 mm) above the floor.

4.19 Lavatories, Sinks, and Mirrors

4.19.1 General. Accessible lavatory fixtures, sinks, vanities, and built-in lavatories shall comply with 4.19.

4.19.2 Height and Clearances

4.19.2.1 Lavatories. Lavatories shall be mounted with a clearance of at least 29 in (735 mm) from the floor to the bottom of the apron. Knee and toe clearances shall comply with Fig. 31.

4.19.2.2 Sinks. Sinks shall be mounted with the counter or rim no higher than 34 in (865 mm) from the floor. Each sink shall be a maximum of 6½ in (165 mm) deep. (Sinks in kitchens of accessible dwelling units shall comply with 4.32.5.5.)

4.19.3 Clear Floor Space. A clear floor space 30 in by 48 in (760 mm by 1220 mm) complying with 4.2.4 shall be provided in front of a lavatory or sink to allow a forward approach. Such clear floor space shall adjoin or overlap an accessible route and shall extend a maximum of 19 in (485 mm) underneath the lavatory or sink (see Fig. 32).

4.19.4 Exposed Pipes and Surfaces. Hot water and drain pipes under lavatories or sinks shall be insulated or otherwise protected if they abut the clearance areas indicated in Fig. 31. There shall be no sharp or abrasive surfaces under lavatories or sinks.

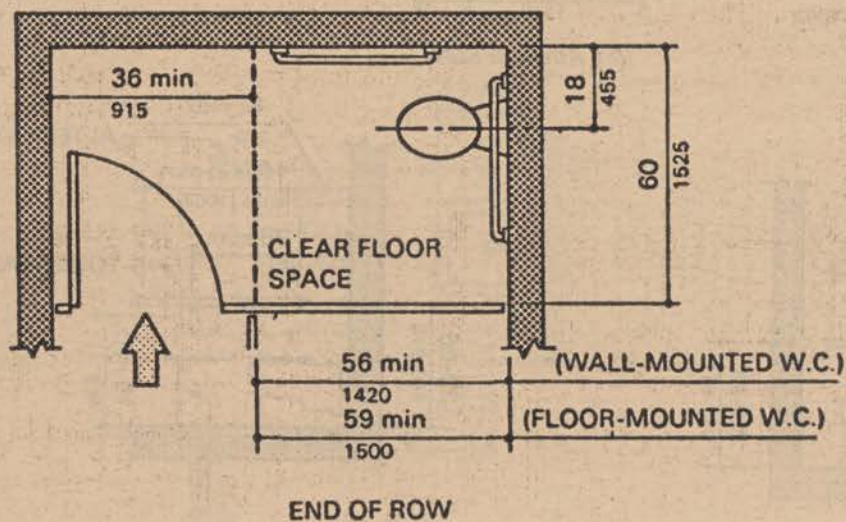
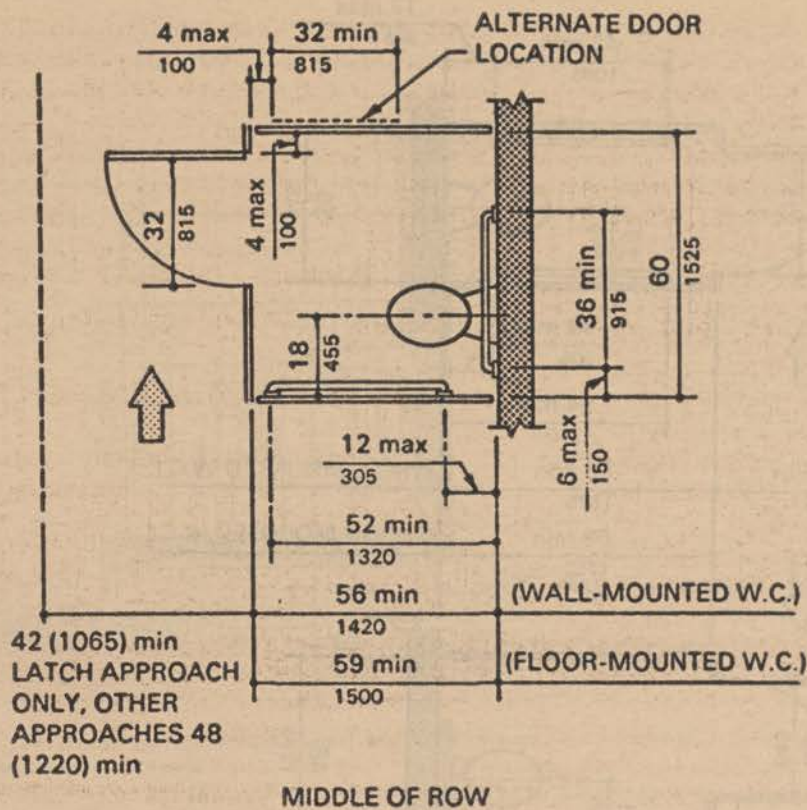
4.19.5 Faucets. Faucets shall comply with 4.25.4. Conventional one-quarter-turn, lever-operated, push-type, and automatically controlled mechanisms are examples of acceptable designs. Self-closing valves are allowed if the faucet remains open for at least 10 seconds.

4.19.6* Mirrors. Mirrors shall be mounted with the bottom edge of the reflecting surface no higher than 40 in (1015 mm) from the floor (see Fig. 31).

*See Appendix for additional information.

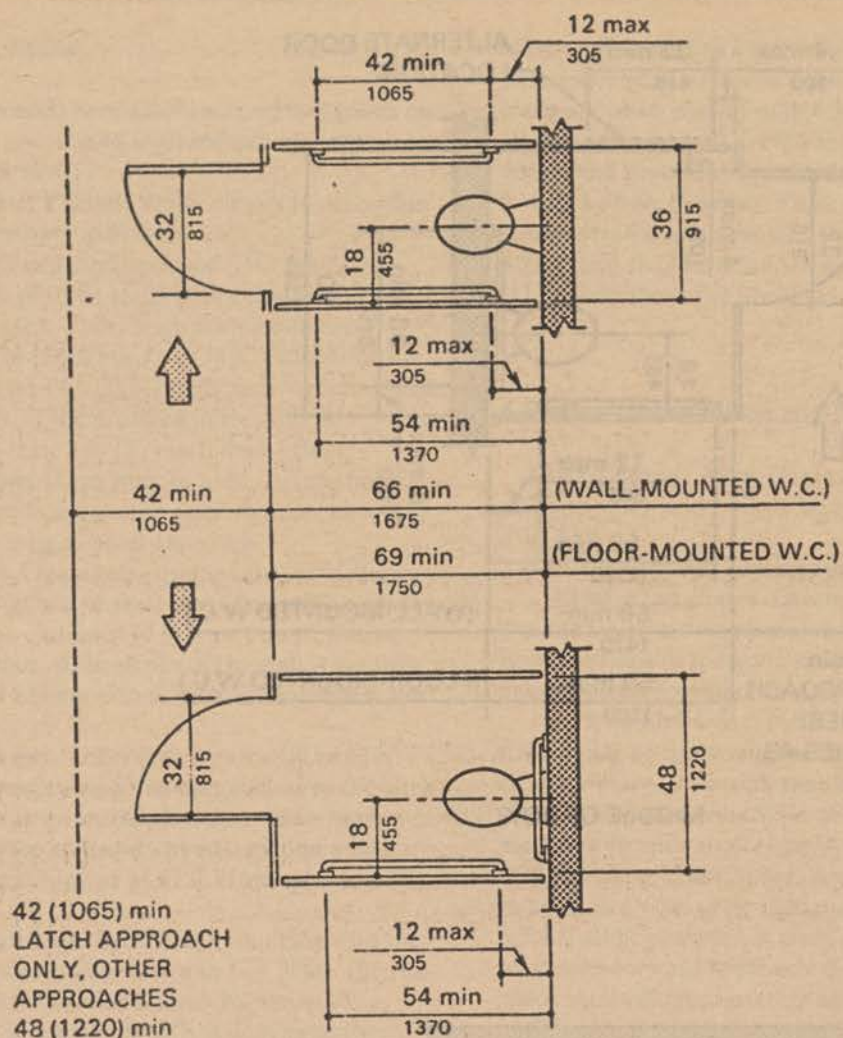
4.19 LAVATORIES, SINKS, AND MIRRORS

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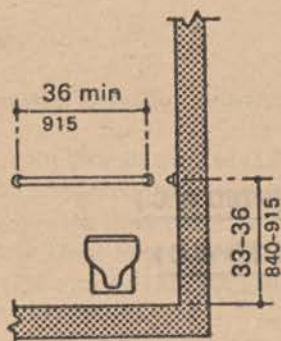


(a) Standard Stalls

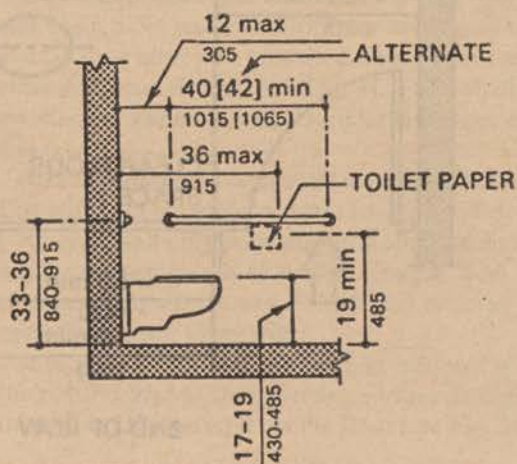
Fig. 30
Toilet Stalls



(b) Alternate Stalls



(c) Rear Wall of Standard Stalls

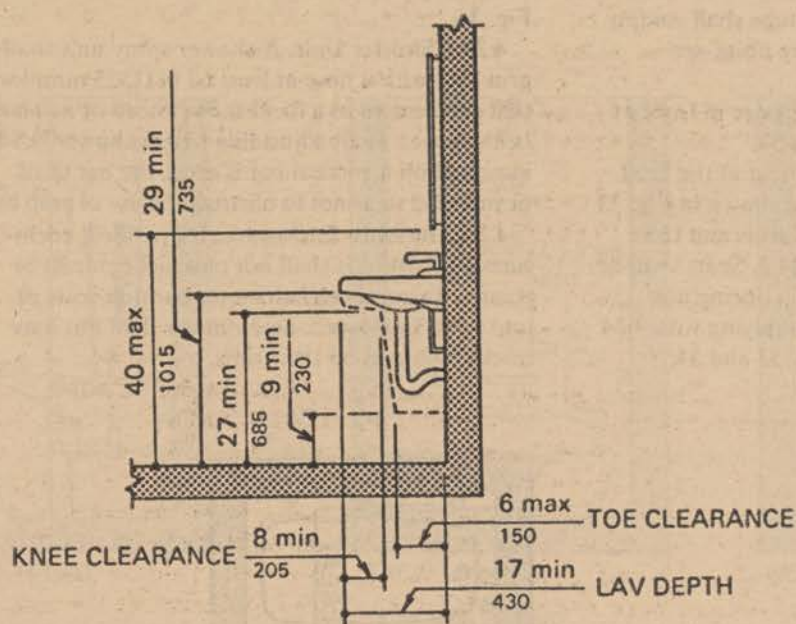


(d) Side Walls

Fig. 30 Toilet Stalls (Continued)

4.19 LAVATORIES, SINKS, AND MIRRORS

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NOTE: Dashed line indicates dimensional clearance of optional underflavatory enclosure.

Fig. 31
Lavatory Clearances

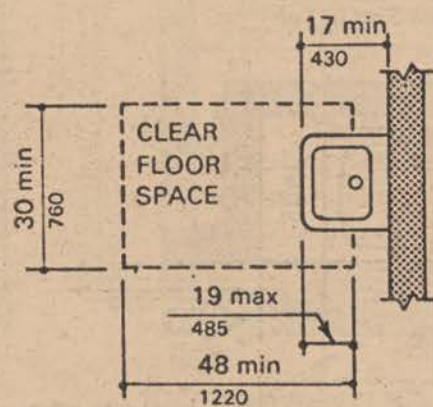


Fig. 32
Clear Floor Space at Lavatories

4.20 Bathtubs

4.20.1 General. Accessible bathtubs shall comply with 4.20. For bathtubs in dwelling units, see 4.32.4.4.

4.20.2 Floor Space. Clear floor space in front of bathtubs shall be as shown in Fig. 33.

4.20.3 Seat. An in-tub seat or a seat at the head end of the tub shall be provided as shown in Fig. 33 and 34. The structural strength of seats and their attachments shall comply with 4.24.3. Seats shall be mounted securely and shall not slip during use.

4.20.4 Grab Bars. Grab bars complying with 4.24 shall be provided as shown in Fig. 33 and 34.

4.20.5 Controls. Faucets and other controls complying with 4.25.4 shall be located as shown in Fig. 34.

4.20.6 Shower Unit. A shower spray unit shall be provided with a hose at least 60 in (1525 mm) long that can be used as a fixed shower head or as a hand-held shower. If an adjustable-height shower head mounted on a vertical bar is used, the bar shall be installed so as not to obstruct the use of grab bars.

4.20.7 Bathtub Enclosures. If provided, enclosures for bathtubs shall not obstruct controls or transfer from wheelchairs onto bathtub seats or into tubs. Enclosures on bathtubs shall not have tracks mounted on their rims.

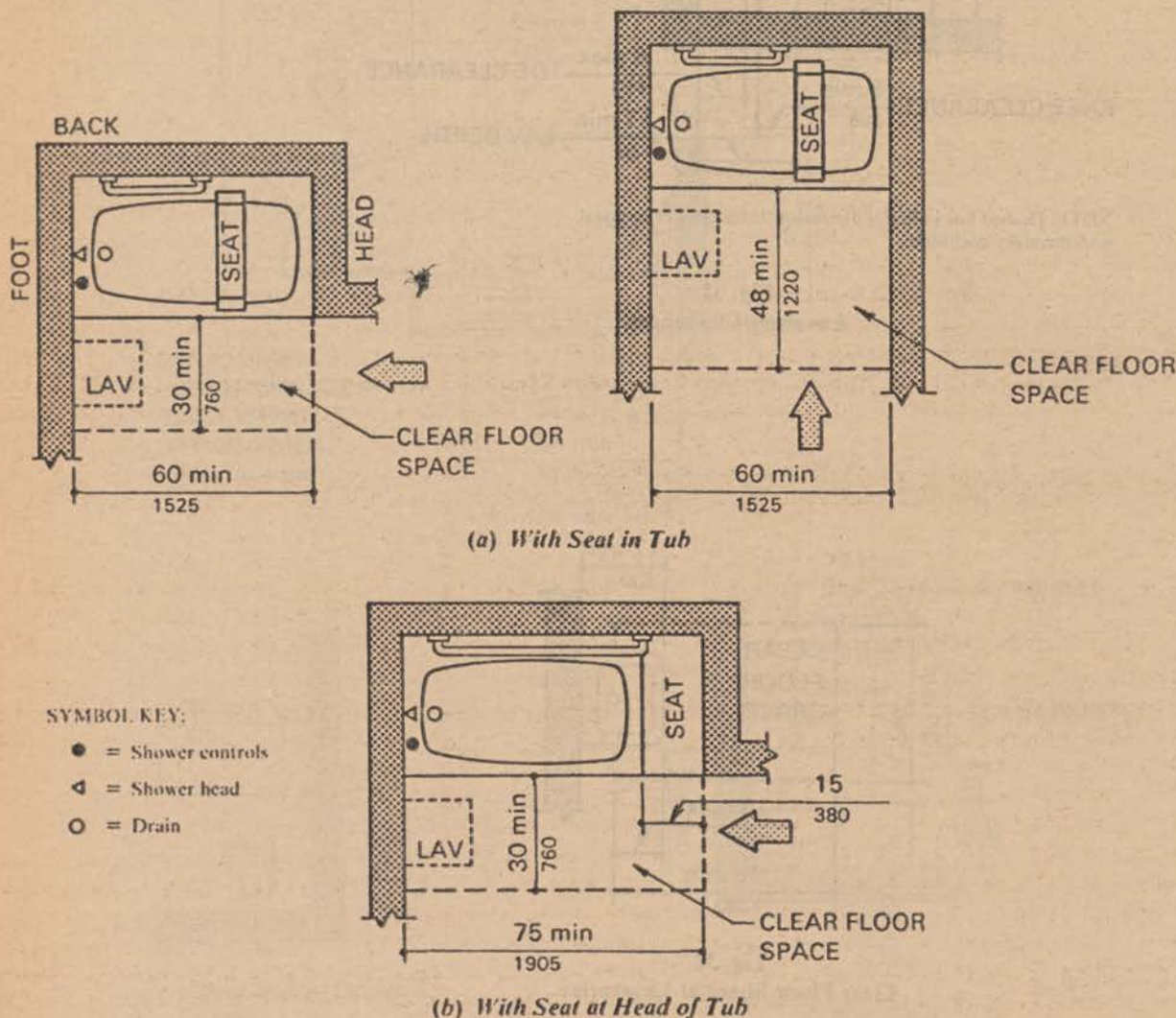


Fig. 33
Clear Floor Space at Bathtubs

4.20 BATHTUBS

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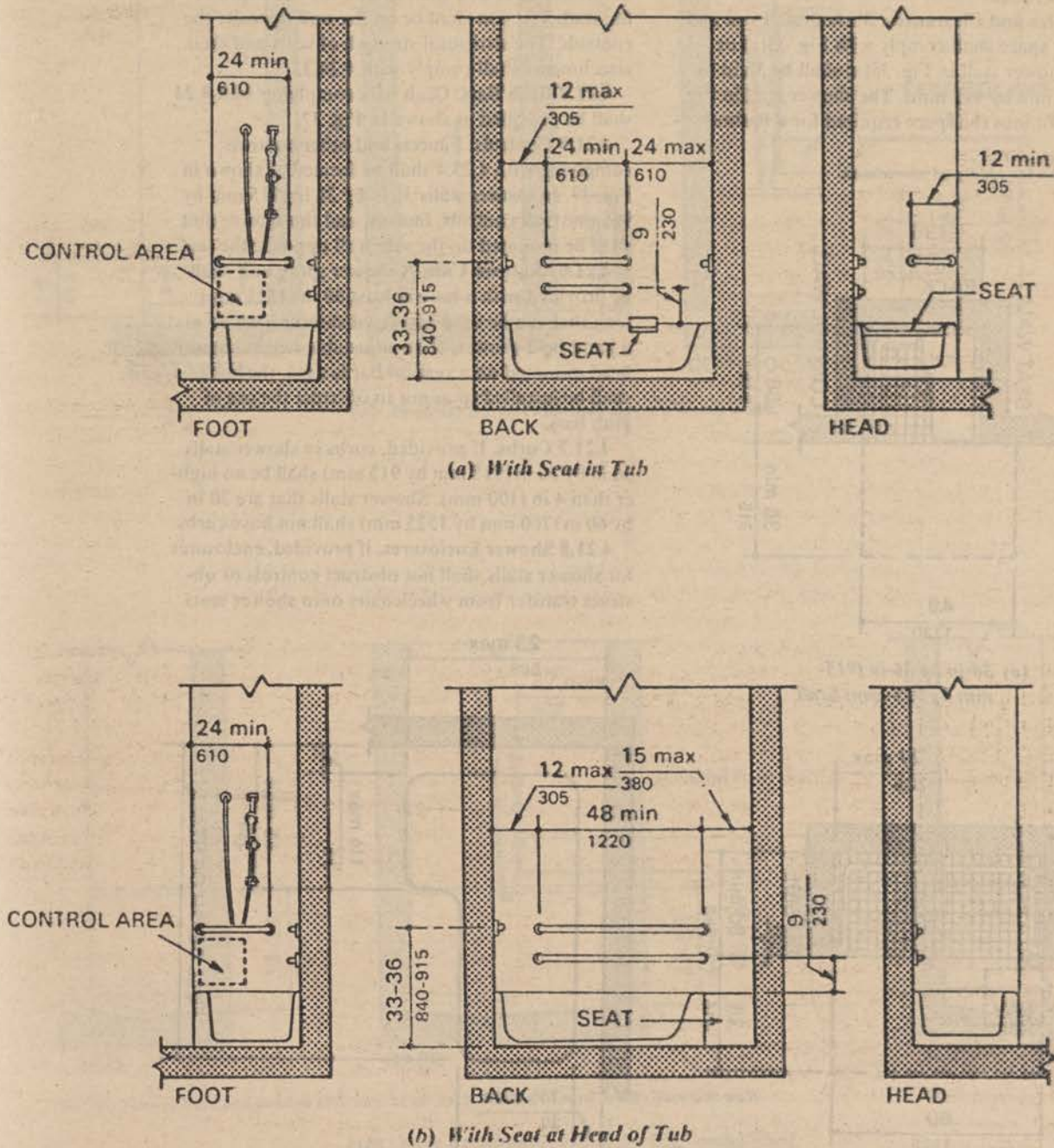


Fig. 34
Grab Bars at Bathtubs

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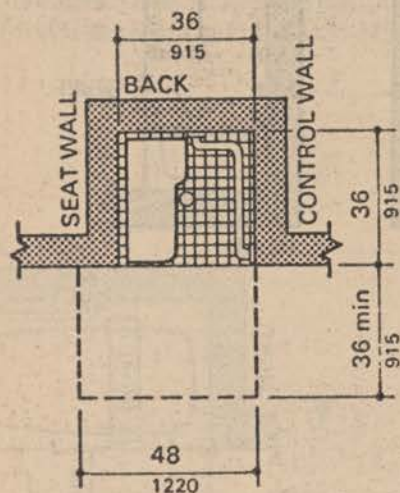
4.21 SHOWER STALLS

4.21 Shower Stalls

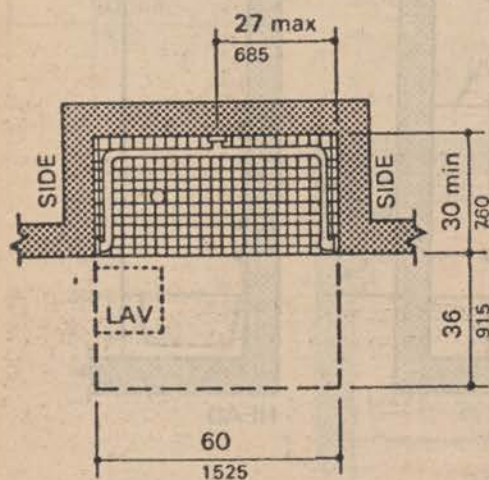
4.21.1* General. Accessible shower stalls shall comply with 4.21. For shower stalls in dwelling units, see 4.32.4.5.

4.21.2 Size and Clearances. Shower stall size and clear floor space shall comply with Fig. 35(a) or (b). The shower stall in Fig. 35(a) shall be 36 in by 36 in (915 mm by 915 mm). The shower stall in Fig. 35(b) will fit into the space required for a bathtub.

*See Appendix for additional information.



(a) 36-in by 36-in (915-mm by 915-mm) Stall



(b) 30-in by 60-in (760-mm by 1525-mm) Stall

Fig. 35
Shower Sizes and Clearances

4.21.3 Seat. A seat shall be provided in shower stalls 36 in by 36 in (915 mm by 915 mm) and shall be as shown in Fig. 36. The seat shall be mounted 17 in to 19 in (430 mm to 485 mm) from the bathroom floor and shall extend the full depth of the stall. The seat shall be on the wall opposite the controls. The structural strength of seats and their attachments shall comply with 4.24.3.

4.21.4 Grab Bars. Grab bars complying with 4.24 shall be provided as shown in Fig. 37.

4.21.5 Controls. Faucets and other controls complying with 4.25.4 shall be located as shown in Fig. 37. In shower stalls 36 in by 36 in (915 mm by 915 mm), all controls, faucets, and the shower unit shall be mounted on the side wall opposite the seat.

4.21.6* Shower Unit. A shower spray unit shall be provided with a hose at least 60 in (1525 mm) long that can be used as a fixed shower head or as a hand-held shower. If an adjustable-height shower head mounted on a vertical bar is used, the bar shall be installed so as not to obstruct the use of grab bars.

4.21.7 Curbs. If provided, curbs in shower stalls 36 in by 36 in (915 mm by 915 mm) shall be no higher than 4 in (100 mm). Shower stalls that are 30 in by 60 in (760 mm by 1525 mm) shall not have curbs.

4.21.8 Shower Enclosures. If provided, enclosures for shower stalls shall not obstruct controls or obstruct transfer from wheelchairs onto shower seats.

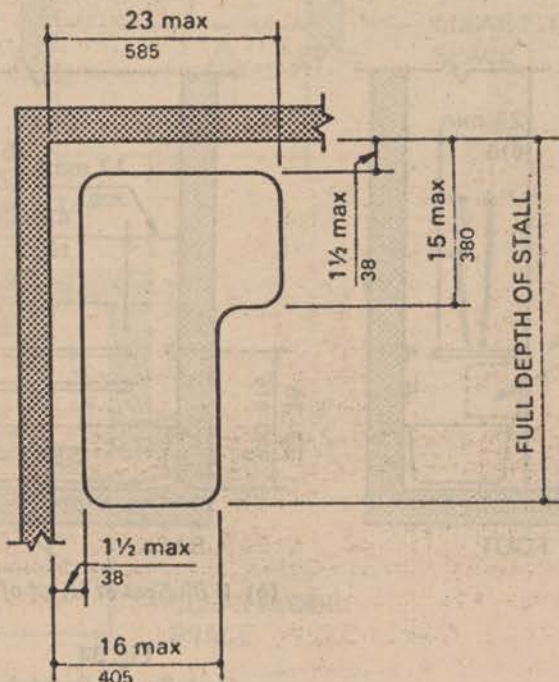
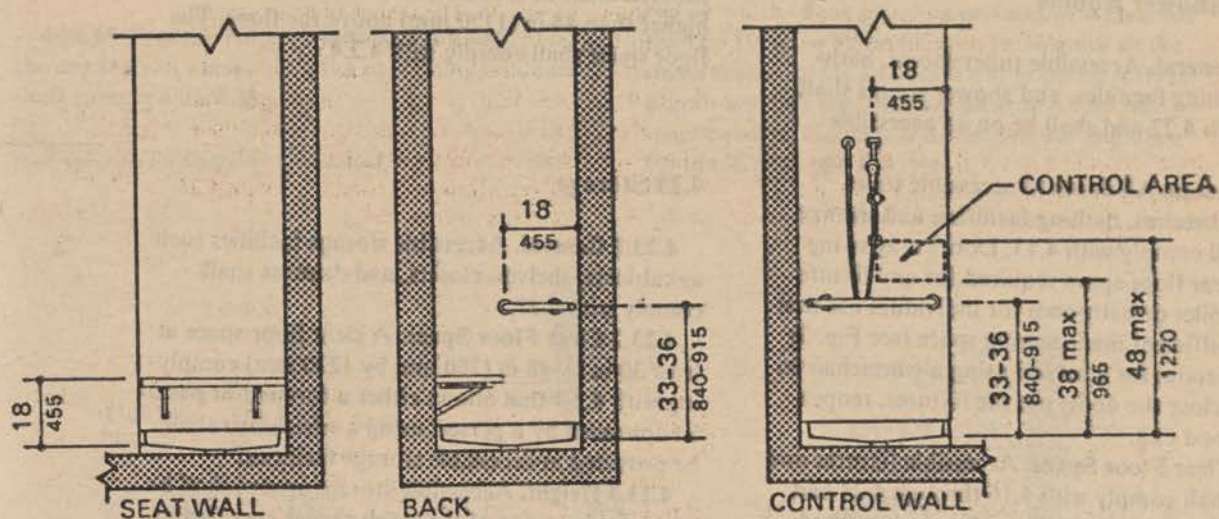


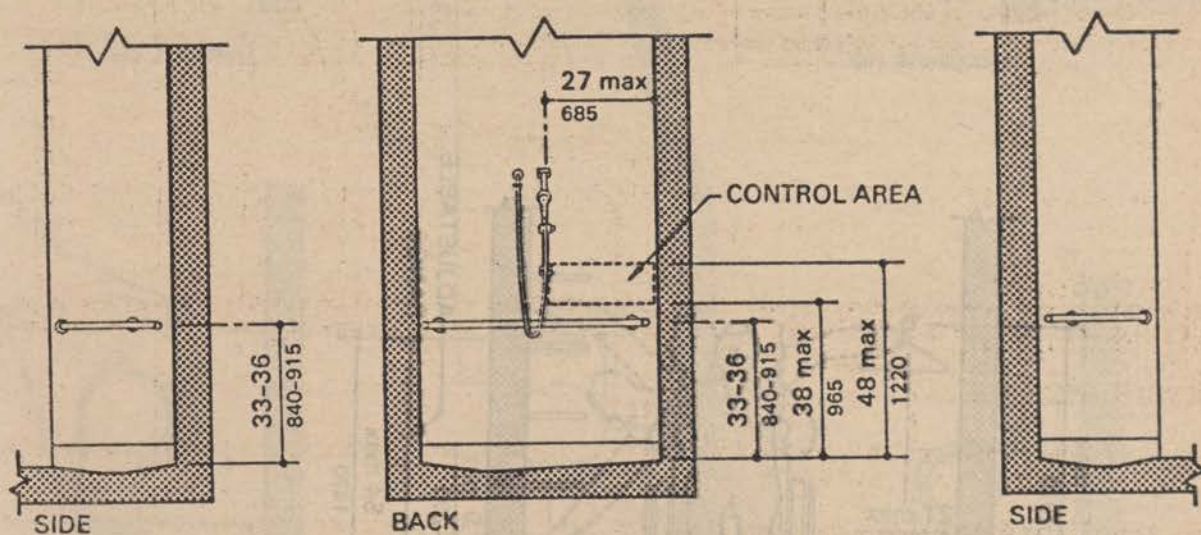
Fig. 36
Shower Seat Design

4.21 SHOWER STALLS

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(a) 36-in by 36-in (915-mm by 915-mm) Stall



NOTE: Shower head and control area may be on back wall (as shown) or on either side wall.

(b) 30-in by 60-in (760-mm by 1525-mm) Stall

Fig. 37
Grab Bars at Shower Stalls

4.22 Toilet Rooms, Bathrooms, Bathing Facilities, and Shower Rooms

4.22.1 General. Accessible toilet rooms, bathrooms, bathing facilities, and shower rooms shall comply with 4.22 and shall be on an accessible route.

4.22.2 Doors. All doors to accessible toilet rooms, bathrooms, bathing facilities, and shower rooms shall comply with 4.13. Doors may swing into the clear floor space required for any fixture only in a toilet or bathroom for individual use that provides sufficient maneuvering space (see Fig. 3) within the room for a person using a wheelchair to enter and close the door, use the fixtures, reopen the door, and exit.

4.22.3 Clear Floor Space. Accessible fixtures and controls shall comply with 4.16 through 4.21 and shall be on an accessible route. An unobstructed turning space complying with 4.2.3 and 4.2.4.1 shall be provided within an accessible room. The clear floor spaces at fixtures and controls, the accessible route, and the turning space may overlap.

4.22.4 Controls and Dispensers. If controls, dispensers, receptacles, or other equipment are provided, at least one of each shall be on an accessible route and shall comply with 4.25.

4.22.5* Medicine Cabinets. Accessible medicine cabinets shall be located with a usable shelf no higher than 44 in (1120 mm) above the floor. The floor space shall comply with 4.2.4.

4.23 Storage

4.23.1 General. Accessible storage facilities such as cabinets, shelves, closets, and drawers shall comply with 4.23.

4.23.2 Clear Floor Space. A clear floor space at least 30 in by 48 in (760 mm by 1220 mm) complying with 4.2.4 that allows either a forward or parallel approach by a person using a wheelchair shall be provided at accessible storage facilities.

4.23.3 Height. Accessible storage spaces shall be within at least one of the reach ranges specified in 4.2.5 and 4.2.6. Clothes rods shall be a maximum of 54 in (1370 mm) from the floor (see Fig. 38).

4.23.4 Hardware. Hardware for accessible storage facilities shall comply with 4.25.4. Touch latches and U-shaped pulls are acceptable.

*See Appendix for additional information.

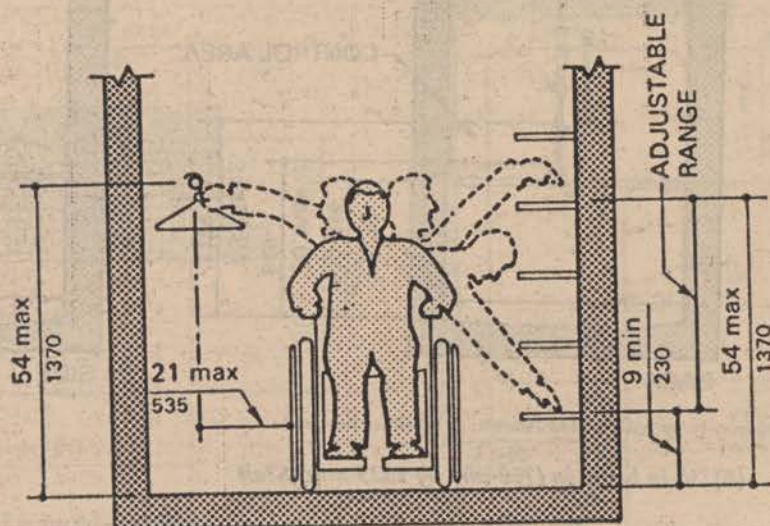


Fig. 38
Storage Shelves and Closets

4.24 GRAB BARS, AND TUB AND SHOWER SEATS

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4.24 Grab Bars, and Tub and Shower Seats

4.24.1* General. All grab bars and tub and shower seats in accessible toilet or bathing facilities shall comply with 4.24.

*See Appendix for additional information.

4.24.2 Size and Spacing of Grab Bars. The diameter or width of the gripping surfaces of a grab bar shall be $1\frac{1}{4}$ in to $1\frac{1}{2}$ in (32 mm to 38 mm), or the shape shall provide an equivalent gripping surface. If grab bars are mounted adjacent to a wall, the space between the wall and the grab bar shall be $1\frac{1}{2}$ in (38 mm) (see Fig. 39(e)).

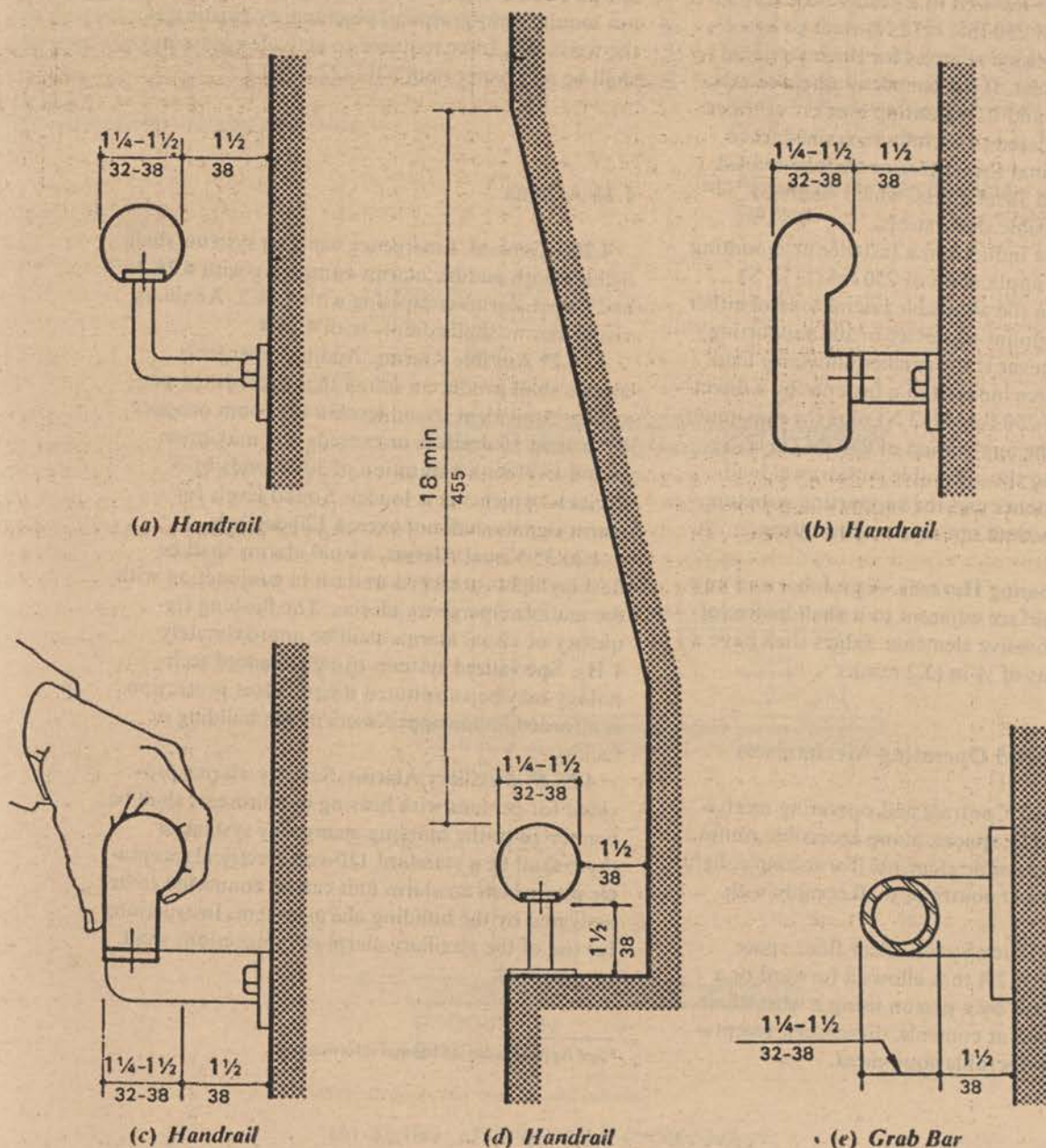


Fig. 39
Size and Spacing of Handrails and Grab Bars

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4.26 ALARMS

4.24.3 Structural Strength. The structural strength of grab bars, tub and shower seats, fasteners, and mounting devices shall meet the following specifications:

(1) Bending stress in a grab bar or seat induced by the maximum bending moment from the application of 250 lbf (1112 N) shall be less than the allowable stress for the material of the grab bar or seat.

(2) Shear stress induced in a grab bar or seat by the application of 250 lbf (1112 N) shall be less than the allowable shear stress for the material of the grab bar or seat. If the connection between the grab bar or seat and its mounting bracket or other support is considered to be fully restrained, then direct and torsional shear stresses shall be totaled for the combined shear stress, which shall not exceed the allowable shear stress.

(3) Shear force induced in a fastener or mounting device from the application of 250 lbf (1112 N) shall be less than the allowable lateral load of either the fastener or mounting device or the supporting structure, whichever is the smaller allowable load.

(4) Tensile force induced in a fastener by a direct tension force of 250 lbf (1112 N) plus the maximum moment from the application of 250 lbf (1112 N) shall be less than the allowable withdrawal load between the fastener and the supporting structure.

(5) Grab bars shall not rotate within their fittings.

4.24.4 Eliminating Hazards. A grab bar and any wall or other surface adjacent to it shall be free of any sharp or abrasive elements. Edges shall have a minimum radius of $\frac{1}{8}$ in (3.2 mm).

4.25 Controls and Operating Mechanisms

4.25.1 General. Controls and operating mechanisms in accessible spaces, along accessible routes, or as part of accessible elements (for example, light switches, dispenser controls) shall comply with 4.25.

4.25.2 Clear Floor Space. Clear floor space complying with 4.2.4 that allows a forward or a parallel approach by a person using a wheelchair shall be provided at controls, dispensers, receptacles, and other operable equipment.

4.25.3 Height. The highest operable part of all controls, dispensers, receptacles, and other operable equipment shall be placed within at least one of the reach ranges specified in 4.2.5 and 4.2.6. Except where the use of special equipment dictates otherwise, electrical and communications-system receptacles on walls shall be mounted no less than 15 in (380 mm) above the floor.

4.25.4 Operation. Controls and operating mechanisms shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls shall be no greater than 5 lbf (22.2 N).

4.26 Alarms

4.26.1 General. Emergency warning systems shall include both audible alarms complying with 4.26.2 and visual alarms complying with 4.26.3. Auxiliary visual alarms shall comply with 4.26.4.

4.26.2* Audible Alarms. Audible emergency alarms shall produce a sound that exceeds the prevailing equivalent sound level in the room or space by at least 15 decibels or exceeds any maximum sound level with a duration of 30 seconds by 5 decibels, whichever is louder. Sound levels for alarm signals shall not exceed 120 decibels.

4.26.3* Visual Alarms. Visual alarms shall be flashing lights arranged to flash in conjunction with the audible emergency alarms. The flashing frequency of visual alarms shall be approximately 1 Hz. Specialized systems using advanced technology may be substituted if equivalent protection is afforded handicapped users of the building or facility.

4.26.4* Auxiliary Alarms. Sensory alarms provided for persons with hearing impairments shall be connected to the building emergency system or there shall be a standard 110-volt electrical receptacle into which an alarm unit can be connected to be activated by the building alarm system. Instructions for use of the auxiliary alarm or connections shall be provided.

*See Appendix for additional information.

4.27 DETECTABLE WARNINGS

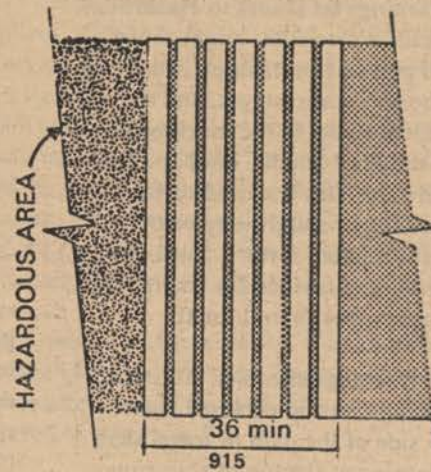
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4.27 Detectable Warnings

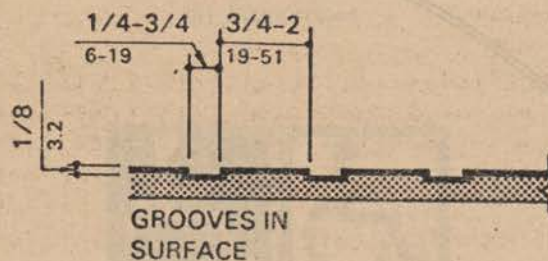
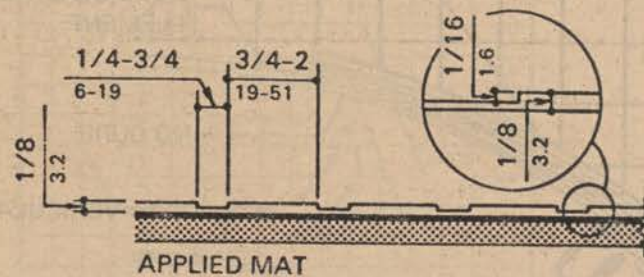
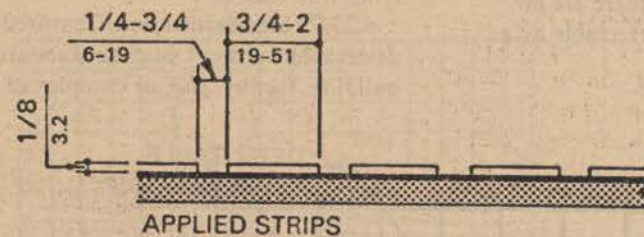
4.27.1 General. Detectable warnings shall comply with 4.27.

4.27.2* Detectable Warnings on Walking Surfaces. Detectable warning textures on walking surfaces shall consist of exposed aggregate concrete, cushioned surfaces made of rubber or plastic, raised strips, or grooves. Textures shall contrast with that of the surrounding surface. Raised strips or grooves shall comply with Fig. 40. Grooves may be used indoors only.

*See Appendix for additional information.



(a) Plan of Detectable Warning Surface



NOTE: Grooves may only be used indoors.

(b) Sections of Detectable Warning Surfaces

Fig. 40
Strips and Grooves Used as Detectable Warnings on Walking Surfaces

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4.27 DETECTABLE WARNINGS

4.27.3* Tactile Warnings on Doors to Hazardous Areas. Doors that lead to areas that might prove dangerous to a blind person (for example, doors to loading platforms, boiler rooms, stages, and the like) shall be made identifiable to the touch by a textured surface on the door handle, knob, pull, or other operating hardware. This textured surface may be made by knurling or roughening or by a material applied to the contact surface. Such textured surfaces shall not be provided for emergency exit doors or any doors other than those to hazardous areas.

4.27.4 Detectable Warnings at Stairs. All stairs, except those in dwelling units, in enclosed stair towers, or set to the side of the path of travel shall have a detectable warning at the top of stair runs (see Fig. 41).

4.27.5* Detectable Warnings at Hazardous Vehicular Areas. If a walk crosses or adjoins a frequently used vehicular way, and if there are no curbs, railings, or other elements detectable by a

*See Appendix for additional information.

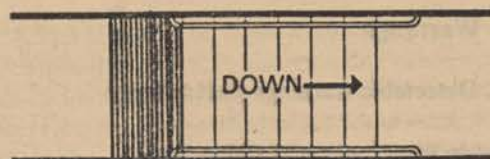


Fig. 41
Detectable Warning at Stairs

person who has a severe visual impairment separating the pedestrian and vehicular areas, the boundary between the areas shall be defined by a continuous, detectable warning texture, which is 36 in (915 mm) wide, complying with 4.27.2 (see Fig. 42).

4.27.6* Detectable Warnings at Reflecting Pools. The edges of reflecting pools shall be protected by railings, walls, curbs, or detectable warnings complying with 4.27.2.

4.27.7* Standardization. Textured surfaces for detectable warnings shall be standard within a building, facility, site, or complex of buildings.

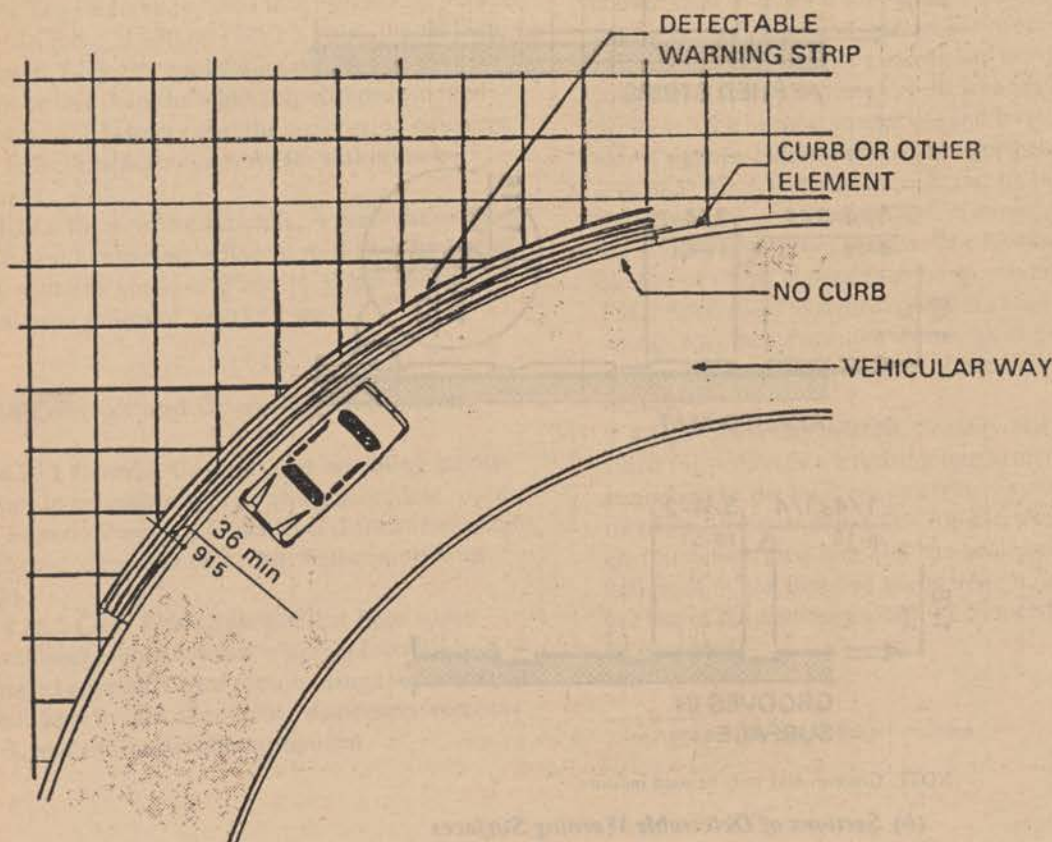


Fig. 42
Detectable Warning at Hazardous Vehicular Areas

4.28 SIGNAGE

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4.28 Signage

4.28.1* General. All signage that provides emergency information or general circulation directions or identifies rooms and spaces shall comply with 4.28.2, 4.28.3, and 4.28.5. Tactile signage shall also comply with 4.28.4.

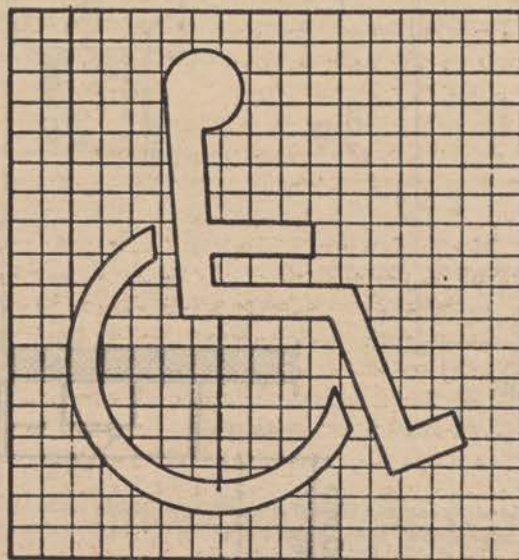
4.28.2* Character Proportion. Letters and numbers on signs shall have a width-to-height ratio between 3:5 and 1:1 and a stroke-width-to-height ratio between 1:5 and 1:10, utilizing an upper-case "X" for measurement.

4.28.3* Color Contrast. Characters and symbols shall contrast with their background — either light characters on a dark background or dark characters on a light background.

4.28.4 Tactile Characters or Symbols. Characters, symbols, or pictographs on tactile signs shall be raised $\frac{1}{32}$ in (0.8 mm) minimum. Raised letters and numbers shall be sans serif uppercase characters. Raised characters or symbols shall be at least $\frac{3}{4}$ in (16 mm) high, but no higher than a nominal 2 in (51 mm).

4.28.5 Symbols of Accessibility. If accessible facilities are identified, then the international symbol of accessibility shall be used. The symbol shall be displayed as shown in Fig. 43.

*See Appendix for additional information.



(a) Proportions



(b) Display Conditions

Fig. 43
International Symbol of Accessibility

4.29 Telephones

4.29.1 General. Accessible public telephones and related equipment shall comply with 4.29.

4.29.2 Clear Floor or Ground Space. Clear floor or ground spaces at each accessible public telephone shall be at least 30 in by 48 in (760 mm by 1220 mm) and shall allow either a forward or parallel approach by a person using a wheelchair (see Fig. 44). The required clear space shall comply with 4.2.4 and shall not be restricted by bases, enclosures, and fixed seats. Public telephones and related equipment shall comply with 4.4.

4.29.3* Mounting Height. The highest operable parts that are essential to the basic operation of the telephone shall be located within the reach ranges specified in 4.2.5 or 4.2.6.

*See Appendix for additional information.

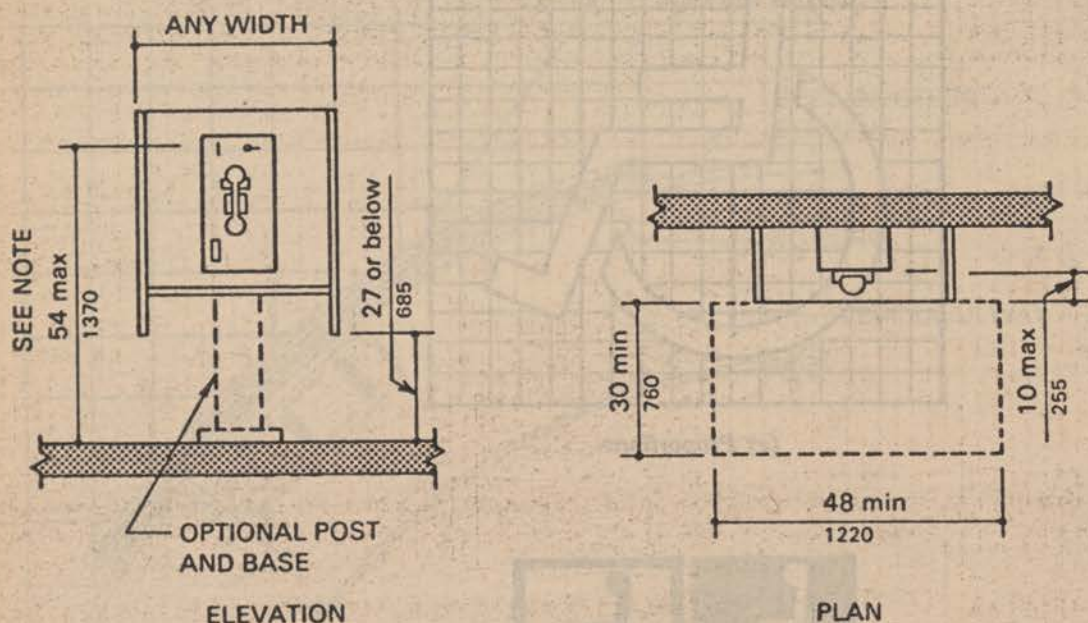
4.29.4 Protruding Objects. Telephones, enclosures, and related equipment shall comply with 4.4.

4.29.5* Equipment for Hearing-Impaired People. Telephones shall be equipped with a receiver that generates a magnetic field in the area of the receiver cap. Volume control shall be available in any building or facility containing a bank of telephones with an accessible telephone. If a telecommunications device for the deaf (TDD) or similar equipment is provided, the location of such equipment shall be indicated by strategically placed signage.

4.29.6 Controls. Accessible telephones shall have pushbutton controls where service for such equipment is available.

4.29.7 Telephone Directories. Telephone directories, if provided, shall be located in accordance with 4.2.

4.29.8 Cord Length. Accessible telephones shall be equipped with a minimum handset cord length of 29 in (735 mm).



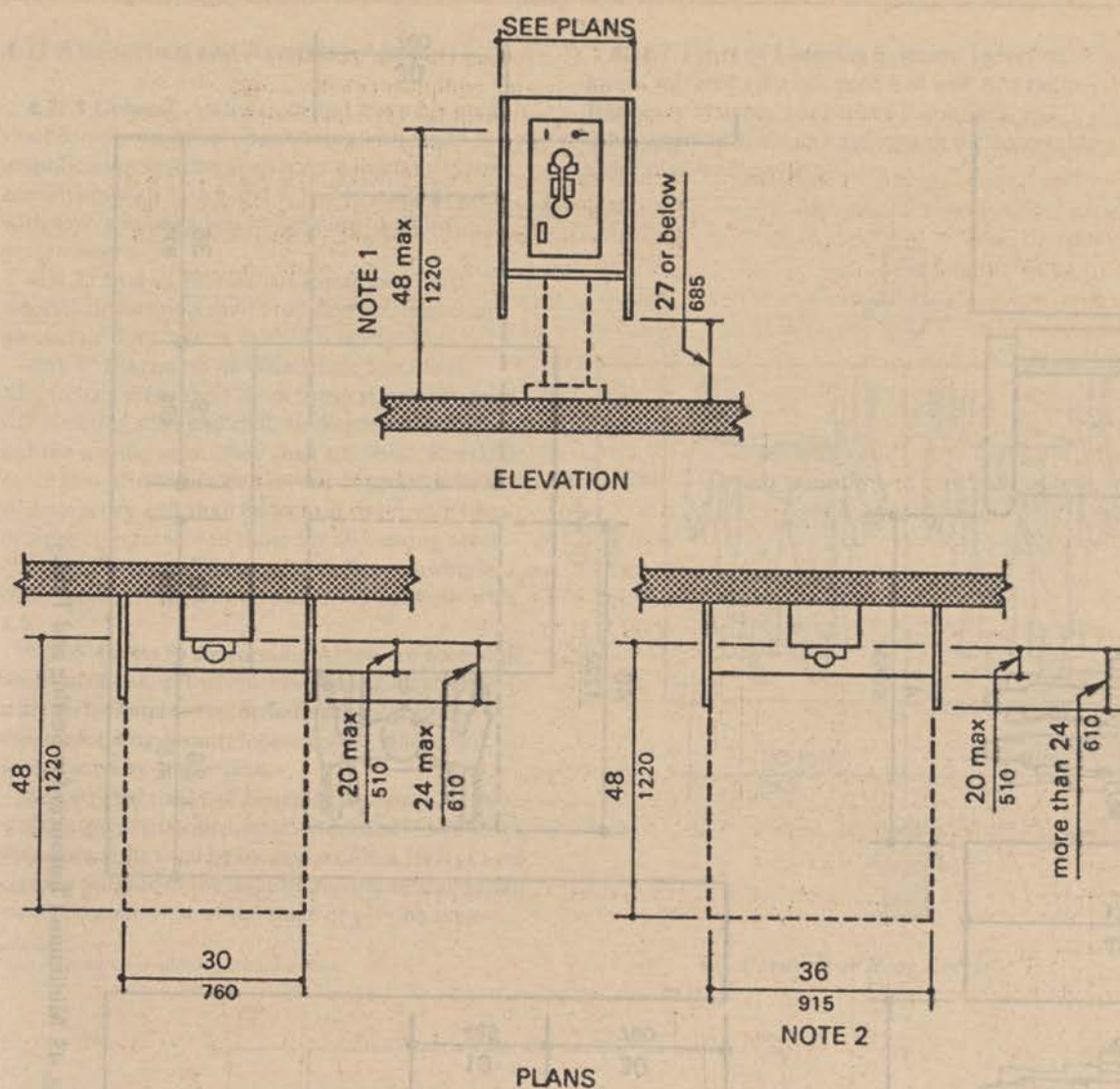
NOTE: This dimension represents the height of the highest operable parts that are essential to the basic operation of the telephone.

(a) Side Reach Possible

Fig. 44
Mounting Heights and Clearances for Telephones

4.30 SEATING, TABLES, AND WORK SURFACES

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NOTES:

- (1) This dimension represents the height of the highest operable parts that are essential to the basic operation of the telephone.
 (2) The required clear floor space increases to 36 in (915 mm) when the enclosure extends more than 24 in (610 mm) from the face of the telephone.

(b) Forward Reach Required

Fig. 44 Mounting Heights and Clearances for Telephones (Continued)

4.30 Seating, Tables, and Work Surfaces

4.30.1 General. Accessible fixed or built-in seating, tables, or work surfaces shall comply with 4.30.

4.30.2 Seating. Accessible seating spaces provided at tables, counters, or work surfaces for people in wheelchairs shall have a clear floor space complying with 4.2.4. Such clear floor space shall not overlap knee space by more than 19 in (485 mm) (see Fig. 45).

4.30.3 Knee Clearances. Accessible seating for people in wheelchairs at tables, counters, and work surfaces shall have knee spaces at least 27 in (685 mm) high, 30 in (760 mm) wide, and 19 in (485 mm) deep (see Fig. 45).

4.30.4* Height of Work Surfaces. The tops of tables and work surfaces shall be from 28 in to 34 in (710 mm to 865 mm) from the floor or ground.

*See Appendix for additional information.

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4.30 SEATING, TABLES, AND WORK SURFACES

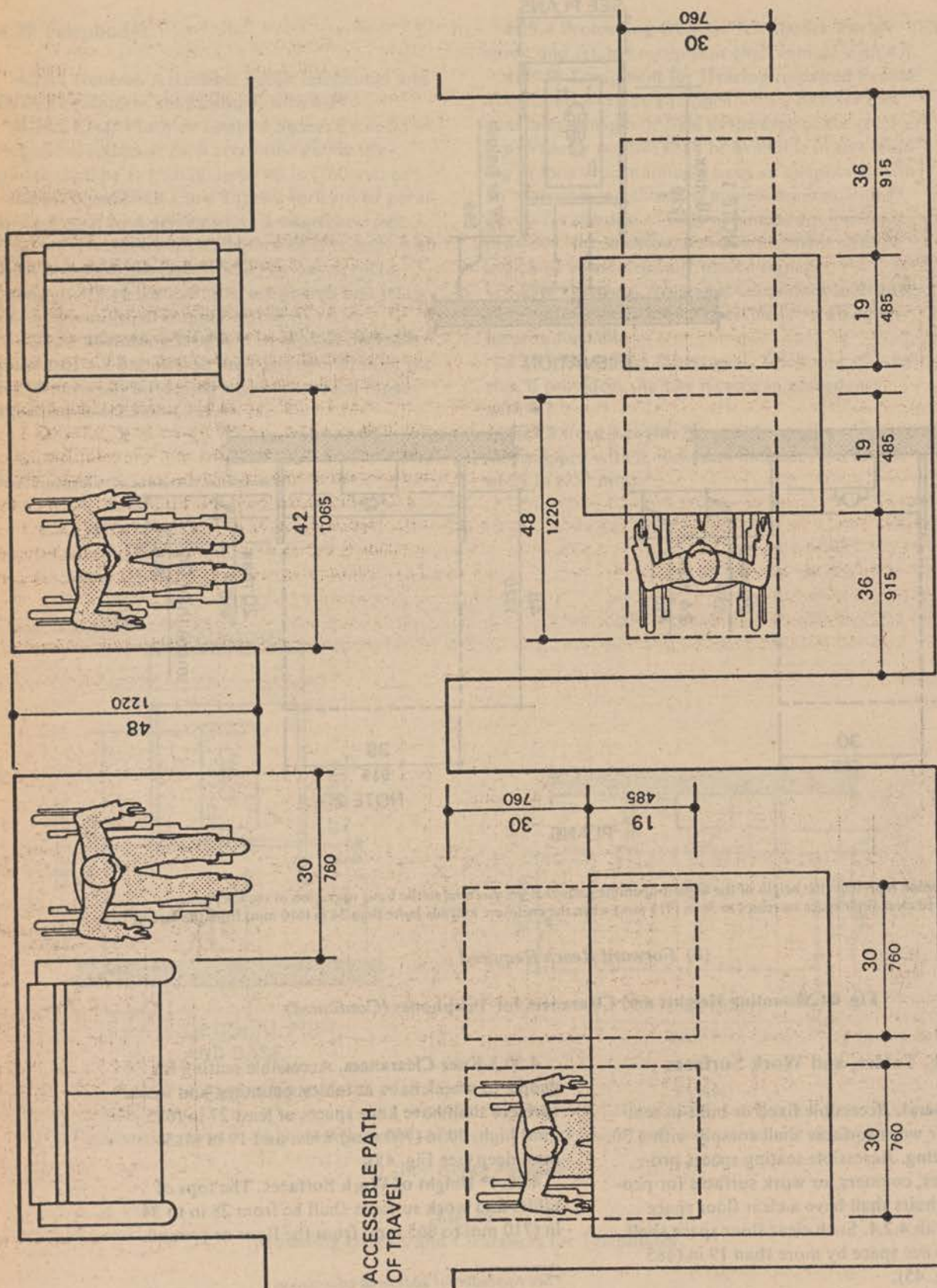


Fig. 45 Minimum Clearances for Seating and Tables

4.31 AUDITORIUM AND ASSEMBLY AREAS

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4.31 Auditorium and Assembly Areas

4.31.1 General. Auditorium and assembly areas shall comply with 4.31. Such areas with audio-amplification systems shall have a listening system complying with 4.31.6 and 4.31.7 to assist persons with severe hearing loss in listening to audio presentations.

4.31.2* Size of Wheelchair Locations. Each wheelchair location shall provide minimum clear ground or floor spaces as shown in Fig. 46.

4.31.3* Placement of Wheelchair Locations. Wheelchair areas shall be an integral part of any fixed seating plan and shall be dispersed throughout the seating area. They shall adjoin an accessible route that also serves as a means of egress in case of emergency and shall be located to provide lines of sight comparable to those for all viewing areas.

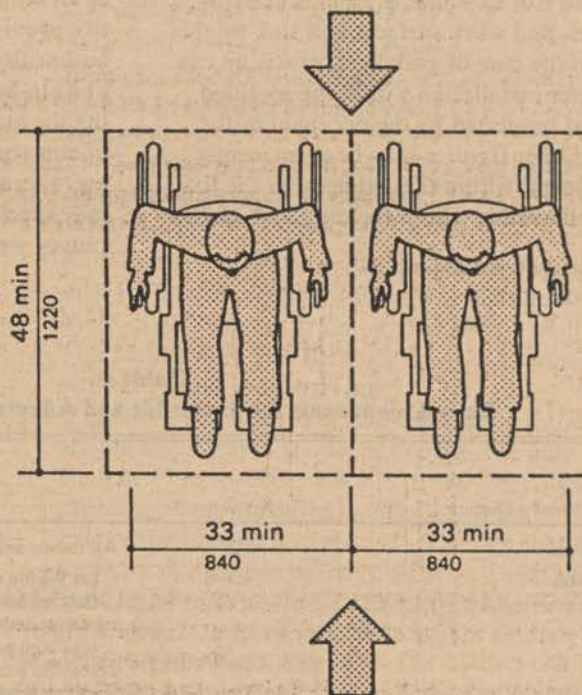
4.31.4 Surfaces. The ground or floor at wheelchair locations shall be level and shall comply with 4.5.

4.31.5 Access to Performing Areas. An accessible route shall connect wheelchair seating locations with performing areas, including stages, arena floors, dressing rooms, locker rooms, and other spaces used by performers.

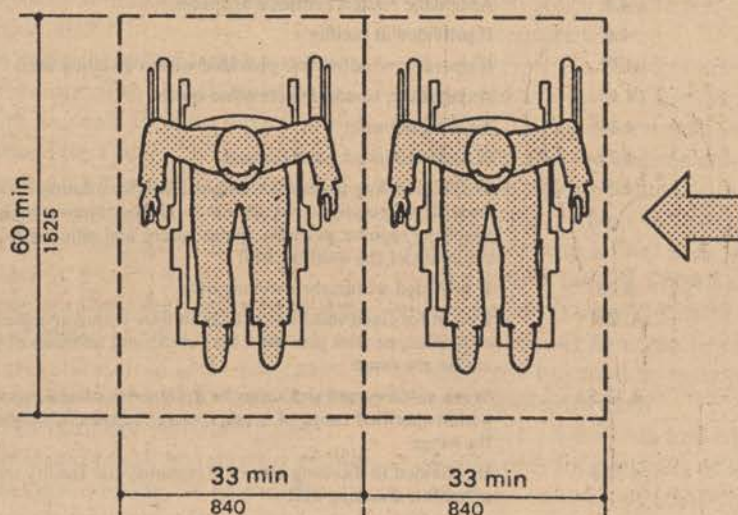
4.31.6* Placement of Listening Systems. If the listening system provided serves individual fixed seats, then such seats shall be located within a 50-ft (15-m) viewing distance of the stage or playing area and shall have complete view of the stage or playing area.

*See Appendix for additional information.

4.31.7 Types of Listening Systems. Induction loops, infrared systems, both FM and AM radio frequency systems, hard-wired earphones, and other equivalent devices are among the acceptable types of listening systems.



(a) Forward or Rear Access



(b) Side Access

Fig. 46 Space Requirements for Wheelchair Seating Spaces in a Series

4.32 Dwelling Units

4.32.1 General. Accessible dwelling units shall comply with 4.32.

4.32.2* Adaptability. Subsections 4.32.4, Bathrooms, and 4.32.5, Kitchens, specify a range of heights and clearances within which certain fixtures may be installed (for example, grab bars at bathtubs and toilets, and work surfaces and sink heights in kitchens). In the case of grab bars, provision can be made for later installation within the specified height range, as requested by the occupant of the dwelling unit. Other fixtures may be permanently installed at a height within these ranges, or the fixtures may be adjustable within the ranges. A unit in

*See Appendix for additional information.

which fixtures may be added or adjusted in height is an adaptable unit. Both adaptable units and units in which fixtures are permanently installed within the heights specified in 4.32 are accessible dwelling units.

4.32.3* Basic Components. Accessible dwelling units shall provide accessible elements and spaces as identified in Table 4. In establishing administrative provisions as described in Section 2, adopting authorities shall specify the number of dwelling units to be accessible, or procedures for determining the number to be accessible, for different types of construction (i.e., new construction or remodeling/alterations). In addition, adopting authorities may specify whether those fixtures for which height ranges are provided in 4.32.4 and 4.32.5 are to be

Table 4
Basic Components for Accessible and Adaptable Dwelling Units

Accessible Element or Space	Section	Application (to the Extent Specified by the Adopting Authority)
1. Space allowances	4.2	All rooms and spaces
2. Accessible routes	4.3	(a) Within dwelling unit to all rooms and spaces (b) Connecting accessible dwelling unit(s) to accessible entrance(s) and to common-use spaces and facilities (c) From public transportation stops, accessible parking spaces, accessible passenger-loading zones, and public streets or sidewalks to accessible building entrance(s) (d) Connecting accessible buildings, facilities, elements, and spaces that are on the same site (e) Connecting accessible building or facility entrances with accessible spaces and elements within the building or facility
3. Floor surfaces	4.5	Accessible routes, rooms, and spaces
4. Parking and passenger-loading zones	4.6	If provided at facility
5. Windows	4.12	If operable windows are provided within dwelling units
6. Doors	4.13	At entrance; to and in accessible spaces
7. Entrances	4.14	To dwelling unit
8. Storage	4.23	If provided in accessible spaces
9. Controls	4.25	Within dwelling units, including heating, ventilating and air-conditioning equipment (other than air distribution registers) requiring regular, periodic maintenance and adjustment by the occupant of the dwelling unit
10. Emergency alarms	4.26	If provided within the dwelling unit
11. Bathrooms	4.32.4	Design for fixed installation of grab bars within specified range of heights, or with provision for subsequent addition of grab bars within the range
12. Kitchens	4.32.5	Work surfaces and sinks may be designed for fixed installation within specified range of heights, or for adjustable heights within the range
13. Laundry facilities	4.32.6	If provided in dwelling unit or if common-use facility serving accessible dwelling unit
14. Common-use spaces and facilities	4.2 through 4.32	If provided at facility and serving accessible dwelling unit
15. Patios, terraces, balconies, carports, and garages	4.2 through 4.32	If provided with accessible dwelling unit

4.32 DWELLING UNITS

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permanently installed at a specific height or whether they are to be designed for adaptability. Table 4 identifies spaces where fixtures are subject to these requirements.

4.32.4* Bathrooms. Accessible bathrooms shall be on an accessible route and shall comply with the requirements of 4.32.4.

4.32.4.1 Doors. Doors may swing into the clear floor space required for any fixture only when the bathroom provides sufficient maneuvering space (see Fig. 3) within the bathroom for a person using a wheelchair to enter and close the door, use the fixtures, reopen the door, and exit.

4.32.4.2 Water Closets

(1) Clear floor space at the water closet shall be as shown in Fig. 47(a). The water closet may be located with the clear area at either the right or left side of the toilet.

(2) The height of the water closet shall be at least 15 in (380 mm) and no more than 19 in (485 mm), measured to the top of the toilet seat.

(3) Grab bars shall be installed as shown in Fig. 29 and shall comply with 4.24, or structural reinforcement or other provisions shall be made that will allow installation of grab bars in the locations shown in Fig. 47(b).

(4) The toilet paper dispenser shall be installed within reach as shown in Fig. 47(b).

4.32.4.3 Lavatory, Mirrors, and Medicine Cabinets

(1) The lavatory and mirrors shall comply with 4.19.

(2) If a cabinet is provided under the lavatory, it shall provide, or shall be removable to provide, the clearances specified in 4.19.2.

(3) If a medicine cabinet is provided above the lavatory, then the bottom of the medicine cabinet shall be located with a usable shelf no higher than 44 in (1120 mm) above the floor.

4.32.4.4 Bathtubs. If a bathtub is provided, it shall have the following features:

(1) **Floor Space.** Clear floor space at bathtubs shall be as shown in Fig. 33.

(2) **Seat.** An in-tub seat or a seat at the head end of the tub shall be provided as shown in Fig. 33 and 34. The structural strength of seats and their attachments shall comply with 4.24.3. Seats shall be mounted securely and shall not slip during use.

(3) **Grab Bars.** Grab bars shall be installed within the range of heights shown in Fig. 34 and shall comply with 4.24, or structural reinforcement or other provisions, as shown in Fig. 48, shall be made

that will allow installation of grab bars meeting these requirements.

(4) **Controls.** Faucets and other controls shall be located as shown in Fig. 34 and shall comply with 4.25.4.

(5) **Shower Unit.** A shower spray unit shall be provided with a hose at least 60 in (1525 mm) long that can be used as a fixed shower head or as a hand-held shower. If an adjustable-height shower head mounted on a vertical bar is used, the bar shall be installed so as not to obstruct the use of grab bars.

4.32.4.5 Showers. If a shower is provided, it shall have the following features:

(1) **Size and Clearances.** Shower stall size and clear floor space shall comply with either Fig. 35(a) or (b). The shower stall in Fig. 35(a) shall be 36 in by 36 in (915 mm by 915 mm). The shower stall in Fig. 35(b) will fit into the same space as a standard bathtub, 60 in (1525 mm) long.

(2) **Seat.** A seat shall be provided in the shower stall in Fig. 35(a) as shown in Fig. 36. The seat shall be 17 in to 19 in (430 mm to 485 mm) high measured from the bathroom floor and shall extend the full depth of the stall. The seat shall be on the wall opposite the controls. The structural strength of seats and their attachments shall comply with 4.24.3. Seats shall be mounted securely and shall not slip during use.

(3) **Grab Bars.** Grab bars shall be installed within the range of heights shown in Fig. 37 and shall comply with 4.24, or structural reinforcement or other provisions, as shown in Fig. 49, shall be made that will allow installation of grab bars meeting these requirements.

(4) **Controls.** Faucets and other controls shall be located as shown in Fig. 37 and shall comply with 4.25.4. In the shower stall in Fig. 35(a), all controls, faucets, and the shower unit shall be mounted on the side wall opposite the seat.

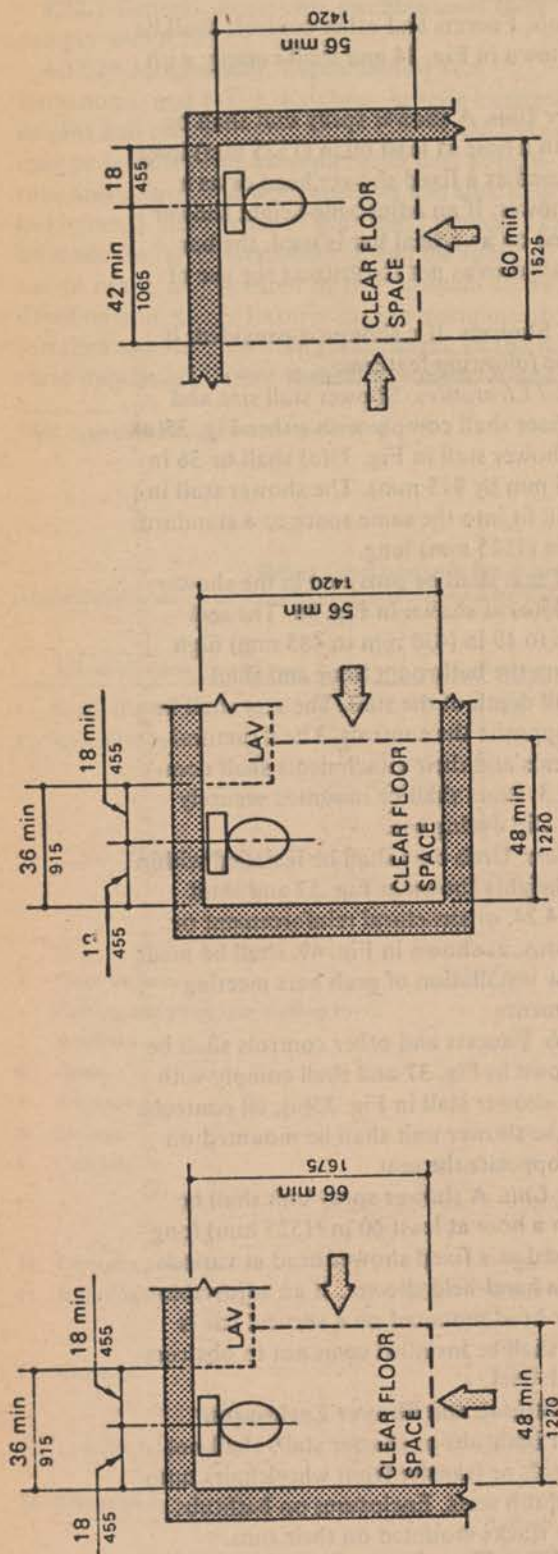
(5) **Shower Unit.** A shower spray unit shall be provided with a hose at least 60 in (1525 mm) long that can be used as a fixed shower head at various heights or as a hand-held shower. If an adjustable-height shower head mounted on a vertical bar is used, the bar shall be installed so as not to obstruct the use of grab bars.

4.32.4.6 Bathtub and Shower Enclosures.

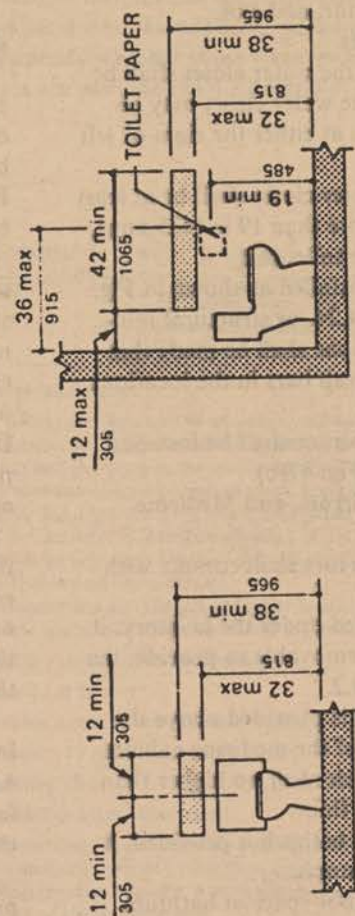
Enclosures for bathtubs or shower stalls shall not obstruct controls or transfer from wheelchairs onto shower or bathtub seats. Enclosures on bathtubs shall not have tracks mounted on their rims.

4.32.4.7 Clear Floor Space. Clear floor space at fixtures may overlap.

*See Appendix for additional information.



(a) Clear Floor Space for Adaptable Bathrooms



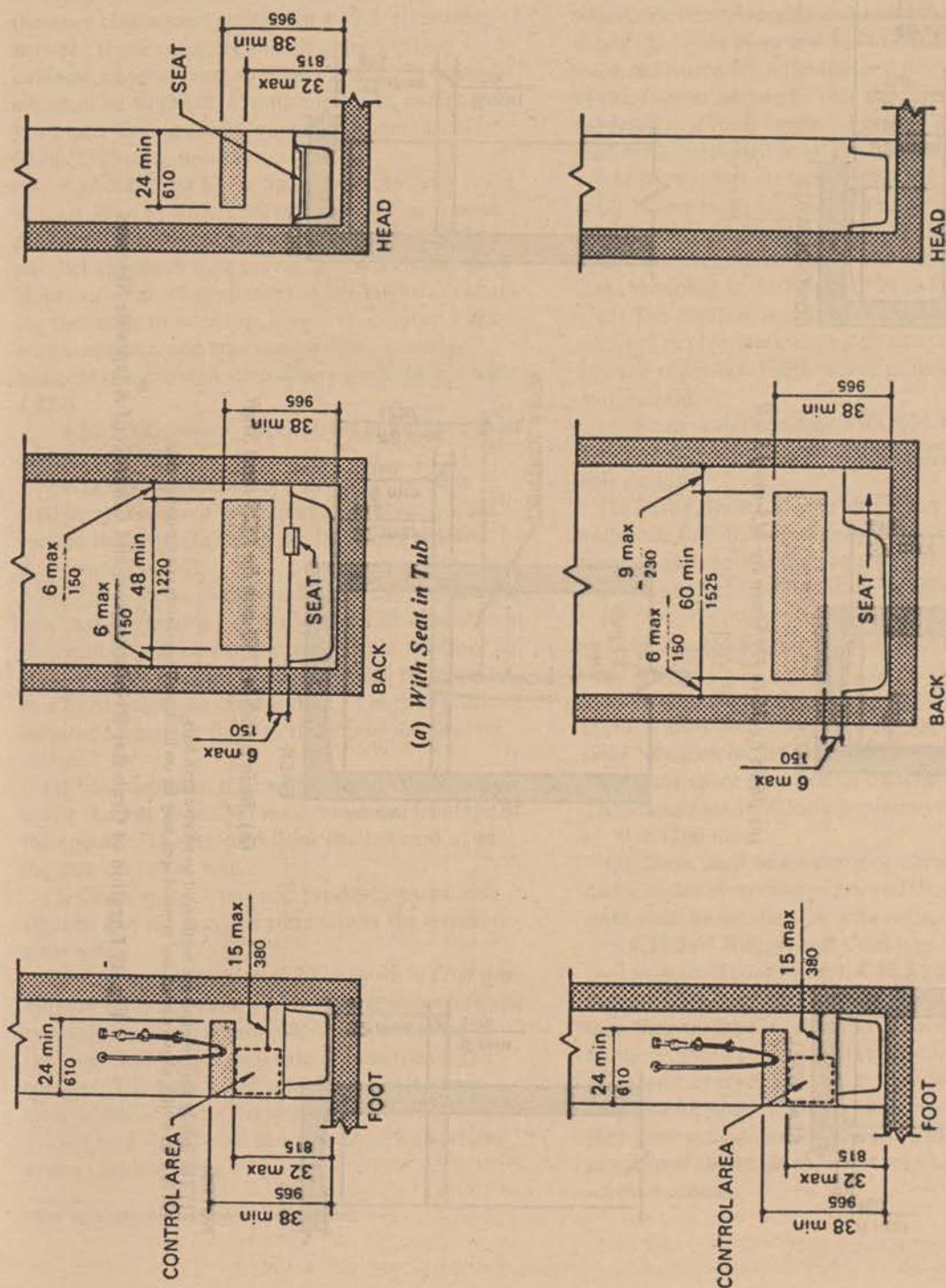
NOTE: The lightly shaded areas are reinforced to receive grab bars.

(b) Reinforced Areas for Installation of Grab Bars

Fig. 47 Water Closets in Adaptable Bathrooms

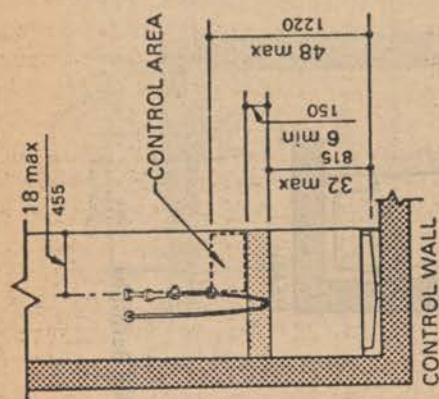
4.32 DWELLING UNITS

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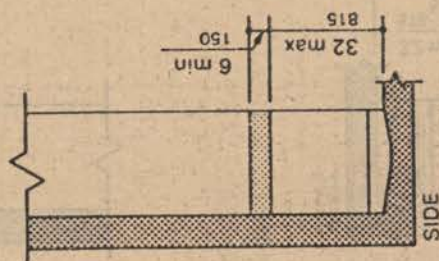
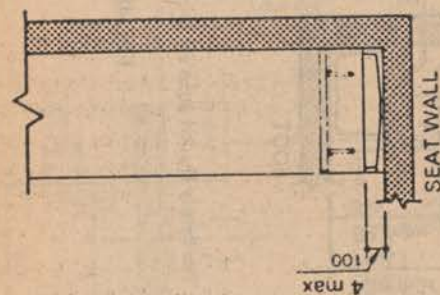


NOTE: The lightly shaded areas are reinforced to receive grab bars.

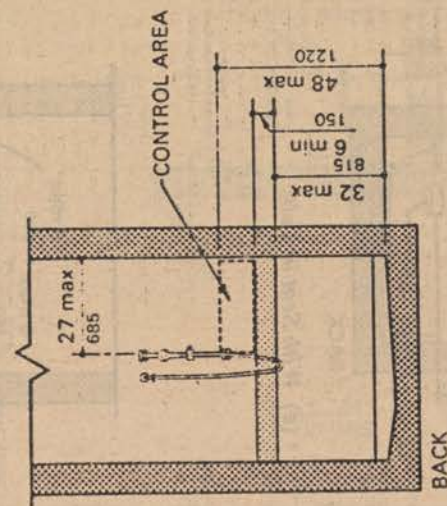
Fig. 48 Location of Grab-Bar Reinforcements and Controls of Adaptable Bathtubs



(a) 36-in by 36-in (915-mm by 915-mm) Stall



(b) 30-in by 60-in (750-mm by 1525-mm) Stall



NOTES:

(1) The lightly shaded areas are reinforced to receive grab bars.

(2) In Fig. 49(b), shower head and control area may be on back wall (as shown) or on either side.

Fig. 49 Location of Grab-Bar Reinforcements and Controls of Adaptable Showers

4.32 DWELLING UNITS

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4.32.5 Kitchens. Accessible kitchens and their components shall be on an accessible route and shall comply with the requirements of 4.32.5.

4.32.5.1 Clearance. Where counters provide the knee clearances specified in 4.19.2, clearances between those counters and all opposing base cabinets, countertops, appliances, or walls in kitchens shall be 40 in (1015 mm) minimum, except in U-shaped kitchens, where such clearances shall be 60 in (1525 mm) minimum.

4.32.5.2 Clear Floor Space. A clear floor space at least 30 in by 48 in (760 mm by 1220 mm) complying with 4.2.4 that allows either a forward or a parallel approach by a person in a wheelchair shall be provided at all appliances in the kitchen, including the range or cooktop, oven, refrigerator freezer, dishwasher, and trash compactor. Laundry equipment located in the kitchen shall comply with 4.32.6.

4.32.5.3 Controls. All controls in kitchens shall comply with 4.25.

4.32.5.4 Work Surfaces. At least one 30-in (760-mm) section of counter shall provide a work surface that complies with the following requirements (see Fig. 50):

(1) The counter shall be adjustable or replaceable as a unit at variable heights between 28 in and 36 in (710 mm and 915 mm), measured from the floor to the top of the counter surface, or shall be mounted at a fixed height no greater than 34 in (865 mm), measured from the floor to the top of the counter surface.

(2) Base cabinets, if provided, shall be removable under the full 30 in (760 mm) minimum frontage of the counter. The finished floor shall extend under the counter to the wall.

(3) Counter thickness and supporting structure shall be 2 in (51 mm) maximum over the required clear area.

(4) A clear floor space of 30 in by 48 in (760 mm by 1220 mm) shall allow a forward approach to the counter. Nineteen inches (485 mm) maximum of the clear floor space may extend underneath the counter. The knee space shall have a minimum clear width of 30 in (760 mm).

(5) There shall be no sharp or abrasive surfaces under such counters.

*See Appendix for additional information.

4.32.5.5* Sink. The sink and surrounding counter shall comply with the following requirements (see Fig. 51):

(1) The sink and surrounding counter shall be adjustable or replaceable as a unit at variable heights between 28 in and 36 in (710 mm and 915 mm), measured from the finished floor to the top of the counter surface or sink rim, or shall be mounted at a fixed height no greater than 34 in (865 mm), measured from the finished floor to the top of the counter surface or sink rim.

(2) Where sinks are installed to be adjustable in height, rough-in plumbing shall be located to accept connections of supply and drain pipes for sinks mounted at the height of 28 in (710 mm).

(3) The depth of a sink bowl shall be no greater than 6½ in (165 mm). Only one bowl of double-bowl or triple-bowl sinks needs to meet this requirement.

(4) Faucets shall comply with 4.25.4. Lever-operated or push-type mechanisms are two acceptable designs.

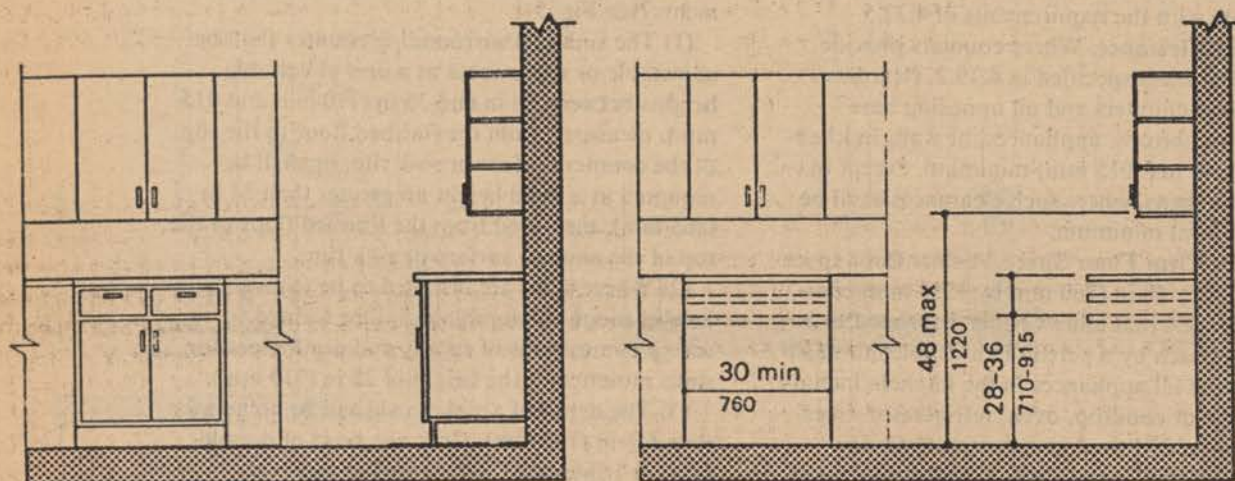
(5) Base cabinets, if provided, shall be removable under the full 30-in (760-mm) minimum frontage of the sink and surrounding counter. The finished flooring shall extend under the counter to the wall.

(6) Counter thickness and supporting structure shall be 2 in (50 mm) maximum over the required clear space.

(7) A clear floor space of 30 in by 48 in (760 mm by 1220 mm) shall allow forward approach to the sink. Nineteen inches (485 mm) maximum of the clear floor space may extend underneath the sink. The knee space shall have a minimum clear width of 30 in (760 mm).

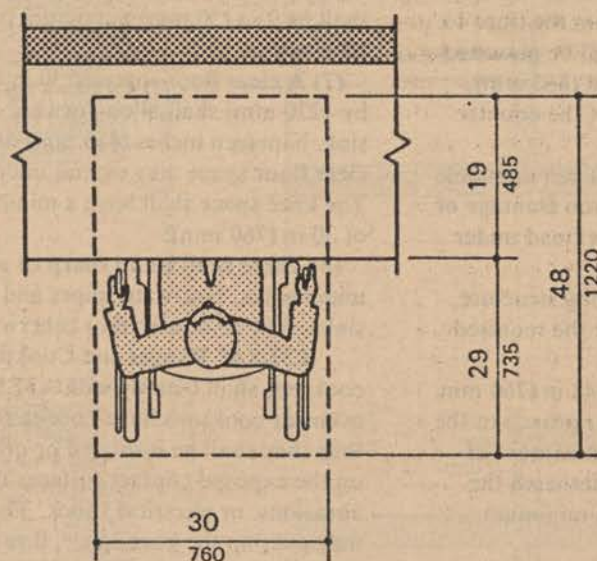
(8) There shall be no sharp or abrasive surfaces under sinks. Hot-water pipes and drain pipes under sinks shall be insulated or otherwise covered.

4.32.5.6* Ranges and Cooktops. Ranges and cooktops shall comply with 4.32.5.2 and 4.32.5.3. If ovens or cooktops have knee spaces underneath, then they shall be insulated or otherwise protected on the exposed contact surfaces to prevent burns, abrasions, or electrical shock. The clear floor space may overlap the knee space, if provided, by 19 in (485 mm) maximum. The location of controls for ranges and cooktops shall not require reaching across burners.



(a) Before Removal of Cabinets and Base

(b) Cabinets and Base Removed and Height Alternatives

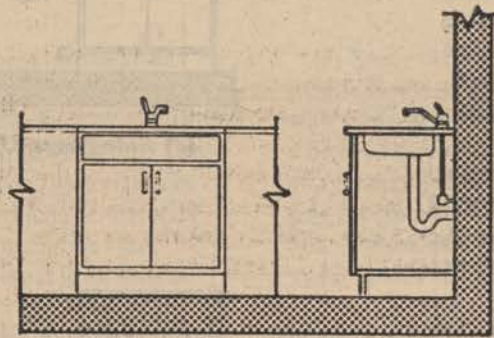


(c) Clear Floor Space under Work Surface

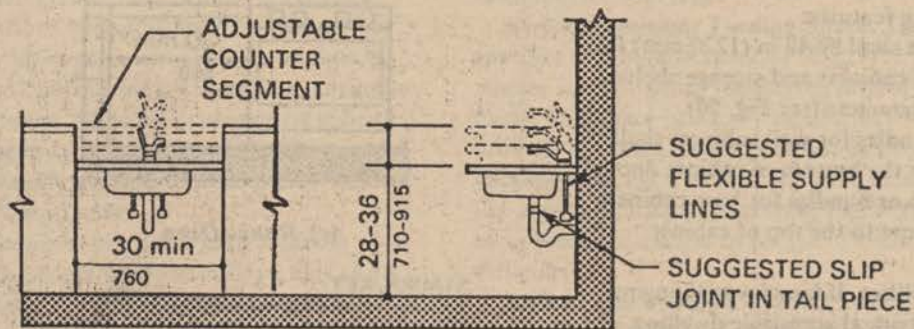
Fig. 50
Counter Work Surface

4.32 DWELLING UNITS

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(a) Before Removal of Cabinets and Base



(b) Cabinets and Base Removed and Height Alternatives

Fig. 51
Kitchen Sink

4.32.5.7* Ovens. Ovens shall comply with 4.32.5.2 and 4.32.5.3. Ovens shall be of the self-cleaning type or be located adjacent to an adjustable height counter with knee space below (see Fig. 52). For side-opening ovens, the door latch side shall be next to the open counter space, and there shall be a pull-out shelf under the oven extending the full width of the oven and pulling out not less than 10 in (255 mm) when fully extended. Ovens shall have controls on front panels; they may be located on either side of the door.

4.32.5.8* Refrigerator/Freezers. Refrigerator/freezers shall comply with 4.32.5.3. Provision shall be made for refrigerator/freezers that are:

(1) Of the vertical side-by-side refrigerator/freezer type; or

(2) Of the over-and-under type and meet the following requirements:

(a) Have at least 50 percent of the freezer space below 54 in (1370 mm) above the floor.

(b) Have 100 percent of the refrigerator space and controls below 54 in (1370 mm).

Freezers with less than 100 percent of the storage volume within the limits specified in 4.2.5 or 4.2.6 shall be the self-defrosting type.

4.32.5.9 Dishwashers. Dishwashers shall comply with 4.32.5.2 and 4.32.5.3. Dishwashers shall have all rack space accessible from the front of the machine for loading and unloading dishes.

4.32.5.10* Kitchen Storage. Cabinets, drawers, and shelf storage areas shall comply with 4.23 and shall have the following features:

(1) Maximum height shall be 48 in (1220 mm) for at least one shelf of all cabinets and storage shelves mounted above work counters (see Fig. 50).

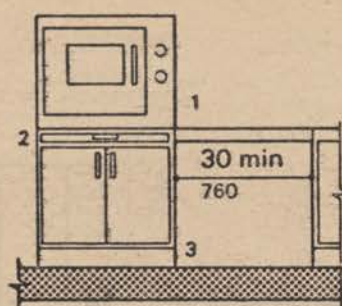
(2) Door pulls or handles for wall cabinets shall be mounted as close to the bottom of cabinet doors as possible. Door pulls or handles for base cabinets shall be mounted as close to the top of cabinet doors as possible.

4.32.6 Laundry Facilities. If laundry equipment is provided within individual accessible dwelling units, or if separate laundry facilities serve one or more accessible dwelling units, they shall meet the requirements of 4.32.6.1 through 4.32.6.3.

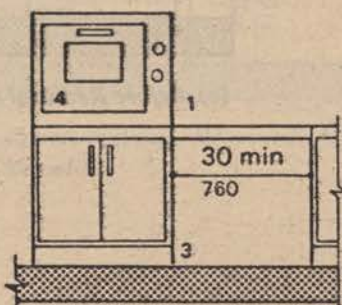
4.32.6.1 Location. Laundry facilities and laundry equipment shall be on an accessible route.

4.32.6.2 Washing Machines and Clothes Dryers. Washing machines and clothes dryers in common-use laundry rooms shall be front loading.

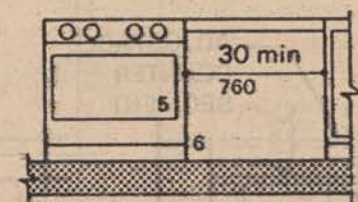
4.32.6.3 Controls. Laundry equipment shall comply with 4.25.



(a) Side-Hinged Door



(b) Bottom-Hinged Door



(c) Range Oven

SYMBOL KEY

- 1. Countertop or wall-mounted oven
- 2. Pull-out board preferred with side-opening door
- 3. Clear open space
- 4. Bottom-hinged door
- 5. Range oven
- 6. Preferred clear open space

Fig. 52
Ovens without Self-Cleaning Feature

*See Appendix for additional information.

Appendix

(This Appendix is not part of American National Standard A117.1-1986, but is included for information only.)

Additional Information

This Appendix contains additional information that should help the designer to understand the minimum requirements of the standard or to design buildings or facilities for greater accessibility. The subsection numbers correspond to the sections or subsections of the standard to which the material relates and are therefore not consecutive (for example, A4.2.1 contains additional information relevant to 4.2.1). Sections for which additional material appears in this Appendix have been indicated by an asterisk.

A4.2 Space Allowances and Reach Ranges

A4.2.1 Wheelchair Passage Width

(1) *Space Requirements for Wheelchairs.* Most wheelchair users need a 30-in (760-mm) clear opening width for doorways, gates, and the like, when the latter are entered head-on. If the wheelchair user is unfamiliar with a building, if competing traffic is heavy, if sudden or frequent movements are needed, or if the wheelchair must be turned at an opening, then greater clear widths are needed. For most situations the addition of an inch of leeway on either side is sufficient. Thus, a minimum clear width of 32 in (815 mm) will provide adequate clearance. However, when an opening or a restriction in a passageway is more than 24 in (60 mm) long, it is essentially a passageway and must be at least 36 in (915 mm) wide.

(2) *Space Requirements for Use of Walking Aids.* Although people who use walking aids can maneuver through clear width openings of 32 in (815 mm), they need passageways and walks that are 36 in (915 mm) wide for comfortable gaits. Crutch tips, often extending down at a wide angle, are a hazard in narrow passageways where they might not be seen by other pedestrians. Thus, the 36-in (915-mm) width provides a safety allowance both for the disabled person and for others.

(3) *Space Requirements for Passing.* Able-bodied people in winter clothing, walking straight ahead with arms swinging, need 32 in (815 mm) of width, which includes 2 in (51 mm) on either side for sway, and another 1-in (25-mm) tolerance on either side for clearing nearby objects or other pedestrians. Almost all wheelchair users and those who use walking aids can also manage within this 32-in (815-mm) width for short distances. Thus, two streams of traffic can pass in 64 in (1625 mm) of width in a comfortable flow. Sixty inches (1525 mm) provides a minimum width for a somewhat more restricted flow. If the clear width is less than 60 in (1525 mm), two wheelchair users will not be able to pass but will have to seek a wider place for passing.

Forty-eight inches (1220 mm) is the minimum width needed for an ambulatory person to pass a nonambulatory or semiambulatory person. Within this 48-in (1220-mm) width, the ambulatory person will have to twist to pass a wheelchair user, a person with a seeing eye dog, or a semiambulatory person. There will be little leeway for swaying or missteps (see Fig. A1).

A4.2.3 Wheelchair Turning Space. This standard specifies a minimum space of 60-in (1525-mm) diameter for a pivoting 180-degree turn of a wheelchair. This space is usually satisfactory for turning around, but many people will not be able to turn without repeated tries and bumping into surrounding objects. The space shown in Fig. A2 will allow most wheelchair users to complete U-turns without difficulty.

A4.2.4 Clear Floor or Ground Space for Wheelchairs. The wheelchair and user shown in Fig. A3 represent typical dimensions for a large adult male. The space requirements in this standard are based upon maneuvering clearances that will accommodate most large wheelchairs. Fig. A3 provides a uniform reference for design not covered by this standard.

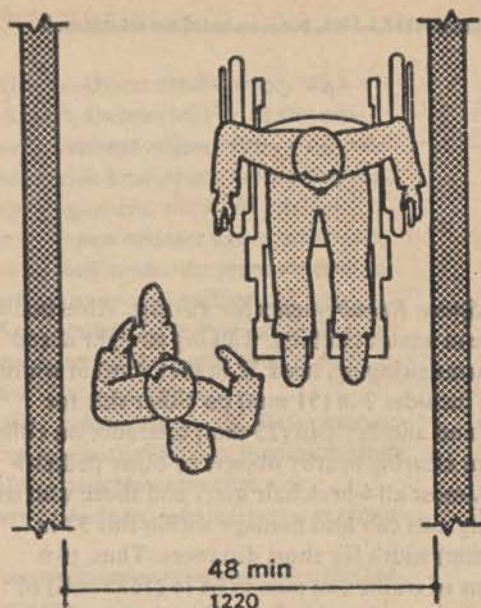


Fig. A1
Minimum Passage Width for One Wheelchair and
One Ambulatory Person

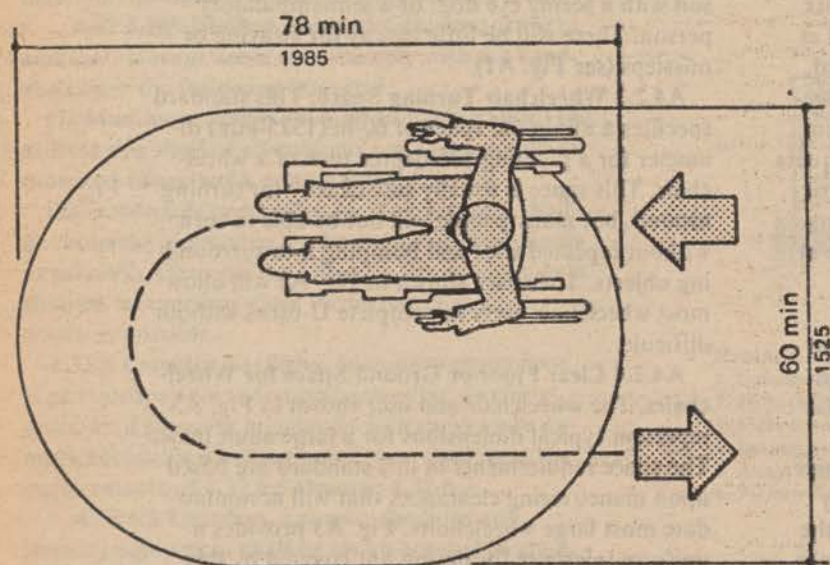
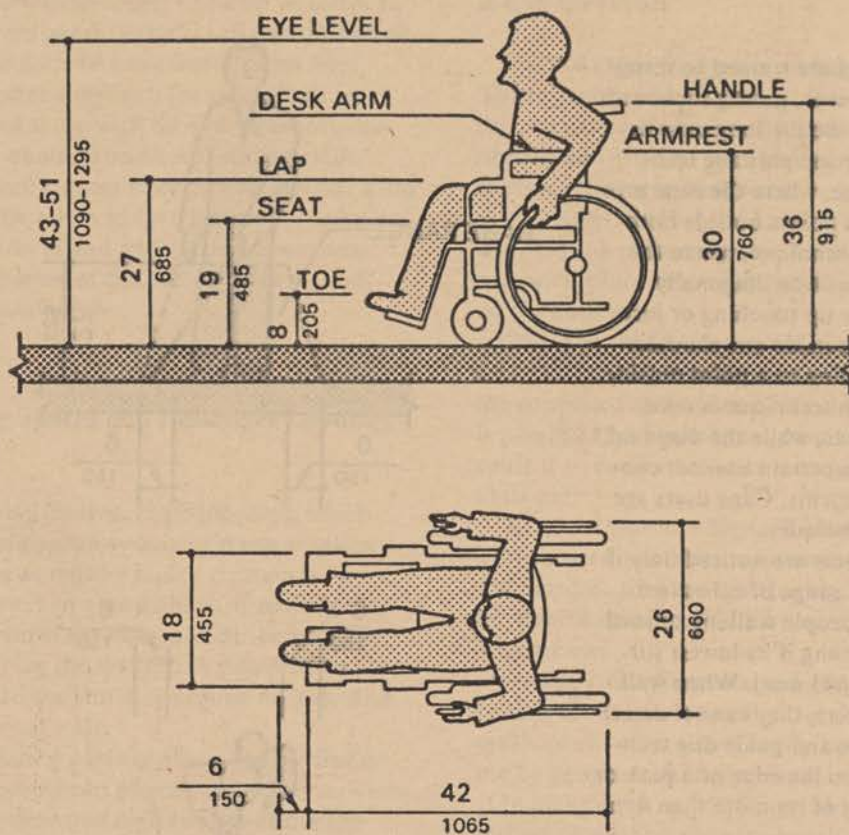


Fig. A2
Space Needed for Smooth U-Turn in a Wheelchair

A4.3 ACCESSIBLE ROUTE

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NOTE: Footrests may extend further for very large people.

Fig. A3
Dimensions of Adult-Sized Wheelchairs

A4.3 Accessible Route

A4.3.1 General

(1) *Travel Distances.* Many disabled people can move at only very slow speeds; for many, traveling 200 ft (61 m) could take about 2 minutes. This assumes a rate of about 1½ ft./s (455 mm/s) on level ground. It also assumes that the traveler would move continuously. However, on trips over 100 ft (30 m), disabled people are apt to rest frequently, which substantially increases their trip times. Resting periods of 2 minutes for every 100 ft (30 m) can be used to estimate travel times for people

with severely limited stamina. In inclement weather, slow progress and resting can greatly increase a disabled person's exposure to the elements.

(2) *Sites.* Level, indirect routes or those with running slopes lower than 1:20 can sometimes provide more convenience than direct routes with maximum allowable slopes or with ramps.

A4.3.10 Egress. In buildings where physically handicapped people are regularly employed or are residents, an emergency management plan for their evacuation also plays an essential role in fire safety.

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A4.5 GROUND AND FLOOR SURFACES

A4.4 Protruding Objects

A4.4.1 General. Guide dogs are trained to recognize and avoid hazards. However, most people with severe impairments of vision use the long cane as an aid to mobility. The two principal cane techniques are the touch technique, where the cane arcs from side to side and touches points outside both shoulders; and the diagonal technique, where the cane is held in a stationary position diagonally across the body with the cane tip touching or just above the ground at a point outside one shoulder and the handle or grip extending to a point outside the other shoulder. The touch technique is used primarily in uncontrolled areas, while the diagonal technique is used primarily in certain limited, controlled, and familiar environments. Cane users are often trained to use both techniques.

Potentially hazardous objects are noticed only if they fall within the detection range of canes (see Fig. A4). Visually impaired people walking toward an object can detect an overhang if its lowest surface is no higher than 27 in (685 mm). When walking alongside projecting objects, they cannot detect overhangs. Since proper cane and guide dog techniques keep people away from the edge of a path or from walls, a slight overhang of no more than 4 in (100 mm) is not a hazard.

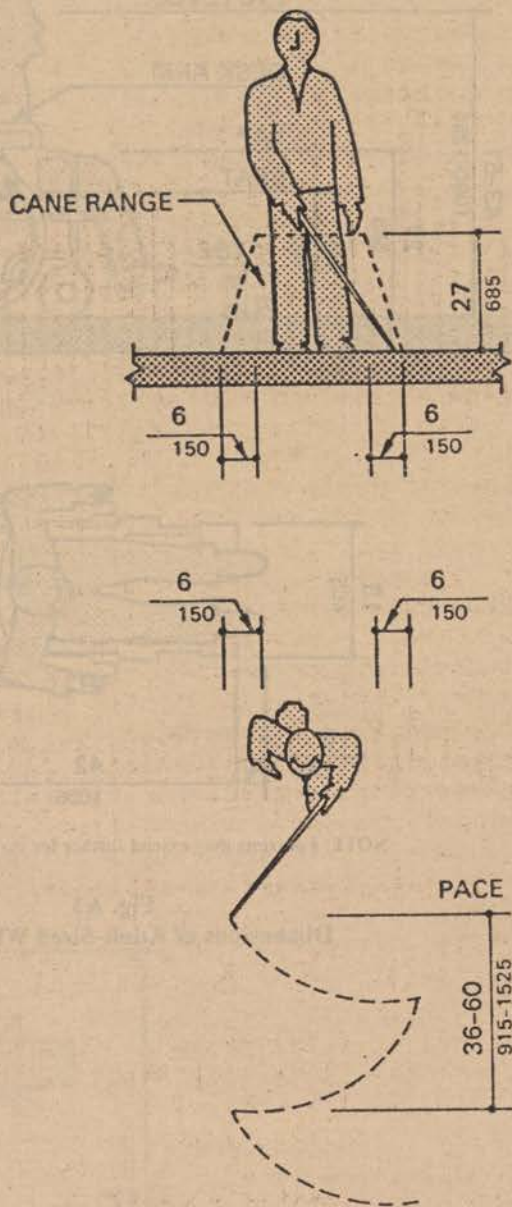


Fig. A4
Cane Technique

A4.5 Ground and Floor Surfaces

A4.5.1 General. Ambulant and semiambulant people who have difficulty maintaining balance and those with restricted gaits are particularly sensitive to slipping and tripping hazards. For such people, a stable and regular surface is necessary to walk safely, particularly on stairs. Wheelchairs can be propelled most easily on surfaces that are hard, stable, and regular. Soft, loose surfaces such as shag carpet, loose sand, and wet clay, and irregular surfaces such as cobblestone, can significantly impede movement of a wheelchair.

Slip resistance is based on the frictional force necessary to keep a shoe heel or crutch tip from slipping on a walking surface under the conditions of use likely to be found on the surface. Although it is known that the static coefficient of friction is the basis of slip resistance, there is not as yet a generally accepted method to evaluate the slip resistance of walking surfaces.

Cross slopes on walks and ground or floor surfaces can cause considerable difficulty in propelling a wheelchair in a straight line.

A4.5.3 Carpet. Much more needs to be done in developing both quantitative and qualitative criteria for carpeting. However, certain functional characteristics are well established. When both carpet and padding are used, it is desirable to have minimum movement (preferably none) between the floor and the pad and the pad and the carpet.

A4.13 DOORS

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which would allow the carpet to hump or warp. In heavily trafficked areas, a thick, soft (plush) pad or cushion, particularly in combination with long carpet pile, makes it difficult for individuals in wheelchairs and those with other ambulatory disabilities to get about. This should not preclude their use in specific areas where traffic is light. Firm carpeting can be achieved through proper selection and combination of pad and carpet, sometimes with the elimination of the pad or cushion, and with proper installation.

A4.6 Parking Spaces and Passenger Loading Zones

A4.6.2 Parking Spaces. High-top vans, which physically handicapped people or transportation services often use, require higher clearances in parking garages than automobiles. If parking spaces are provided for vans, a wider access aisle may be needed for the side lift. A side lift that loads perpendicular to the van may require an aisle that is 96 in (2440 mm) wide.

Signs designating parking places for physically handicapped people can be seen from a driver's seat if the signs are mounted high enough above the ground and located at the front of a parking space.

A4.8 Ramps

A4.8.1 General. Ramps are essential for wheelchair users if elevators or lifts are not available to connect different levels. However, some people who use walking aids have difficulty with ramps and prefer stairs.

A4.8.2 Slope and Rise. The ability to manage an incline is related to both its slope and its length. Wheelchair users with disabilities affecting arms or with low stamina have serious difficulty using inclines. Most ambulatory people and most people who use wheelchairs can manage a slope of 1:16. Many people cannot manage a slope of 1:12 for 30 ft (9 m). Many people who have difficulty negotiating very long ramps at relatively shallow slopes can manage very short ramps at steeper slopes.

A4.8.5 Handrails. The requirements for stair and ramp handrails in this standard are for adults. When children are principal users in a building or facility, a second set of handrails at an appropriate height can assist them and aid in preventing accidents.

A4.10 Elevators

A4.10.6 Door Protective and Reopening Device. The required door reopening device would hold the door open for 20 seconds if the doorway remains obstructed. After 20 seconds, the door may begin to close. However, if designed in accordance with ANSI/ASME A17.1-1984 and A17.1a-1985, the door closing movement could still be stopped if a person or object exerts sufficient force at any point on the door edge.

Owing to the kinetic nature of the motion, reversal of the closing door is not instantaneous. Until the continued movement of the door is arrested, it is possible that limited movement of the door may cause it to come in contact with a person or object in its path.

A4.10.7 Door and Signal Timing for Hall Calls. This subsection allows variation in the location of call buttons, advance time for warning signals, and the door-holding period used to meet the time requirement.

A4.10.12 Car Controls. Industry-wide standardization of elevator control panel design would make all elevators significantly more convenient for use by people with severe visual impairments.

In many cases, it will be possible to locate the highest control on elevator panels within 48 in (1220 mm) from the floor.

A4.10.13 Car Position Indicators. A special button may be provided that would activate the audible signal within the given elevator only for the desired trip, rather than maintaining the audible signal in constant operation.

A4.10.14 Emergency Communications. A device that requires no handset is easier to use by people who have difficulty reaching.

A4.13 Doors

A4.13.8 Thresholds at Doorways. Thresholds and changes in surface height in doorways are particularly inconvenient for wheelchair users who also have low stamina or restrictions in arm movement, because complex maneuvering is required to get over the level change while operating the door.

A4.13.9 Door Hardware. Some physically handicapped persons must push against a door with their chair or walker to open it. Applied kickplates on doors with closers can reduce required maintenance by withstanding abuse from wheelchairs and canes. To be effective, they should cover the door width, less approximately 2 in (51 mm), up to a height of

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A4.19 LAVATORIES, SINKS, AND MIRRORS

16 in (405 mm) from its bottom edge and be centered across the top.

A4.13.10 Door Closers. Closers with delayed action features give a person more time to maneuver through doorways. They are particularly useful on frequently used interior doors. When used on fire doors, the closer should be adjusted so that the delay does not exceed requirements established by the authority having jurisdiction.

A4.13.11 Door-Opening Force. Although some people with disabilities are unable to exert the maximum allowable force to open the door, as given in this subsection, these forces are the minimum practical forces to permit the door closers to function. Door closers must have certain minimum closing forces to close doors satisfactorily. Opening forces may be measured with a spring scale as follows:

(1) *Hinged Doors.* Apply force perpendicular to the door at the actuating device or 30 in (760 mm) from the hinged side, whichever is the farthest from the hinge.

(2) *Sliding or Folding Doors.* Apply force parallel to the door at the door pull or latch.

(3) *Application of the Force.* Apply force gradually so that the applied force does not exceed the resistance of the door. Air-pressure differentials, especially in high-rise buildings, can have an adverse effect on door-opening force. Accessible openings located in these areas will sometimes require modification of this subsection or possibly the use of automatic or power-assisted doors to comply with allowable forces given.

Forces to operate a door involve more than a simple single operation. For example, doors that are latched must be unlatched by a force that may consist of depressing a lever or applying a direct force. The additional force to overcome the inertia of a door will exceed that required to maintain movement of the door. In general, only a momentary auxiliary force should be permitted to exceed the force given in 4.13.11.

A4.15 Drinking Fountains and Water Coolers

A4.15.2 Spout Height. Commercially available drinking fountains having two spouts at varying heights are ideally suited both for people in wheelchairs and people who find it difficult or awkward to bend low. One spout must adhere to the 36-in height; the recommended height for the higher spout is 42 in, measured from the floor.

A4.16 Water Closets

A4.16.3 Height. Preferences for the heights of toilet seats vary considerably among physically handicapped people. Higher seat heights may be an advantage to some ambulatory physically handicapped people, but a disadvantage for wheelchair users and others. Toilet seats that are 18 in (455 mm) high seem to be a reasonable compromise. Thick seats and filler rings are available to adapt standard fixtures to these requirements.

A4.16.4 Grab Bars. Fig. A5(a) and (b) show the diagonal and side approaches most commonly used to transfer from a wheelchair to a water closet. Some wheelchair users can transfer from the front of the toilet, while others use a 90-degree approach. Most people who use these two additional approaches can also use either the diagonal approach or the side approach.

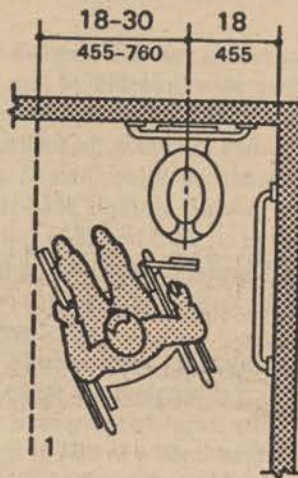
A4.16.5 Flush Controls. Flush valves and related plumbing can be located behind walls or to the side of the toilet, or a toilet seat lid can be provided if plumbing fittings are directly behind the toilet seat. Such designs reduce the chance of injury and imbalance caused by leaning back against the fittings. Flush controls for tank-type toilets have a standardized mounting location on the left side of the tank (facing the tank). Tanks can be obtained by special order with controls mounted on the right side. If administrative authorities require flush controls for flush valves to be located in a position that conflicts with the location of the rear grab bar, then that bar may be split or shifted toward the wide side of the toilet area.

A4.17 Toilet Stalls

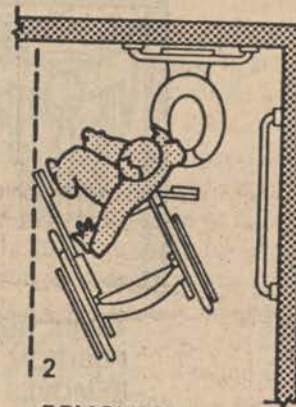
A4.17.5 Doors. To make it easier for wheelchair users to close the doors of toilet stalls, doors can be provided with closers, spring hinges, or a pull bar mounted on the inside surface of the door near the hinge side.

A4.19 Lavatories, Sinks, and Mirrors

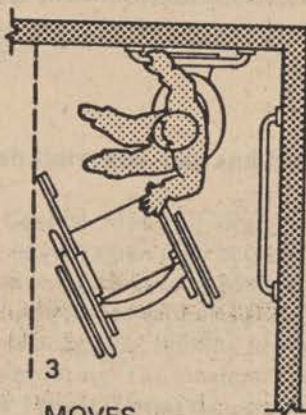
A4.19.6 Mirrors. If mirrors are to be used by both ambulatory people and wheelchair users, then they must be at least 74 in (1880 mm) high at their topmost edge. A single full-length mirror can accommodate all people, including children.



TAKES TRANSFER
POSITION, SWINGS
FOOTREST OUT OF
THE WAY, SETS
BRAKES



REMOVES
ARMREST,
TRANSFERS



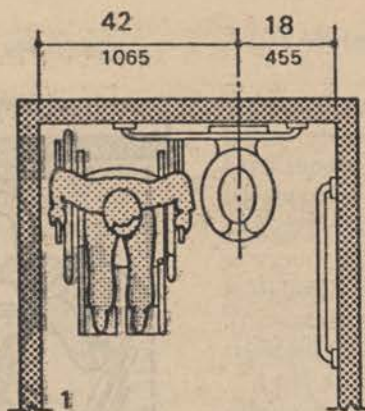
MOVES
WHEELCHAIR OUT
OF THE WAY,
CHANGES
POSITION (SOME
PEOPLE FOLD
CHAIR OR PIVOT IT
90° TO THE TOILET)



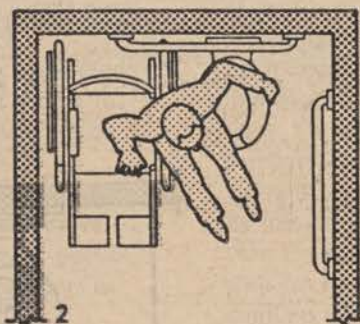
POSITIONS ON
TOILET, RELEASES
BRAKE

(a) *Diagonal Approach*

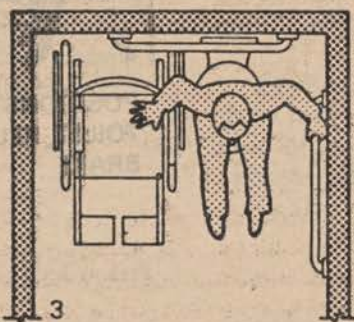
Fig. A5
Wheelchair Transfers



TAKES TRANSFER
POSITION,
REMOVES
ARMREST, SETS
BRAKES



TRANSFERS



POSITIONS ON
TOILET

(b) Side Approach

Fig. A5 Wheelchair Transfers (Continued)

A4.27 DETECTABLE WARNINGS

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A4.21 Shower Stalls

A4.21.1 General. Shower stalls that are 36 in by 36 in (915 mm by 915 mm) wide provide additional safety to people who have difficulty maintaining balance because all grab bars and walls are within easy reach. Seated people use the walls of these showers for back support. Shower stalls that are 60 in (1525 mm) wide and have no curb may increase usability of a bathroom by wheelchair users because the shower area provides additional maneuvering space.

A4.21.6 Shower Unit. In facilities where vandalism might cause a maintenance problem, such as in isolated or unmonitored areas, a fixed shower head may be used in lieu of a hand-held shower head. The fixed shower head should be mounted 48 in (1220 mm) above the shower floor.

A4.22 Toilet Rooms, Bathrooms, Bathing Facilities, and Shower Rooms

A4.22.5 Medicine Cabinets. Other alternatives for storing medical and personal care items are very useful to physically handicapped people. Shelves, drawers, and floor-mounted cabinets can be provided within the reach ranges of physically handicapped people.

A4.24 Grab Bars, and Tub and Shower Seats

A4.24.1 General. Many physically handicapped people rely heavily upon grab bars to maintain balance and prevent serious falls. Many people brace their forearms between supports and walls to give them more leverage and stability in maintaining balance or for lifting. The maximum grab bar clearance of 1½ in (38 mm) required in this standard is a safety clearance to prevent injuries from arms slipping through the opening. It also provides adequate gripping room.

A4.26 Alarms

A4.26.2 Audible Alarms. Audible emergency signals must have an intensity and frequency that can attract the attention of individuals who have partial hearing loss. People over 60 years of age generally have difficulty perceiving frequencies higher than 10 000 Hz.

A4.26.3 Visual Alarms. The specifications in this section do not preclude the use of zoned or coded alarm systems. In zoned systems, the emergency exit lights in an area will flash whenever an audible signal rings in the area.

A4.26.4 Auxiliary Alarms. In accessible sleeping accommodations or other rooms where people with hearing impairments may work or reside, care should be taken to locate the auxiliary emergency alarms to ensure that they will be effective when warning of emergencies. To be effective, visual auxiliary alarm devices must be located and oriented so that they will spread signals and reflections throughout a space or raise the overall light level sharply. The amount and type of light necessary to wake a deaf person from a sound sleep in a dark room will vary depending on a number of factors, including the size and configuration of the room, the distance between the source and the person, whether or not the light flashes, and the cycle of flashing. A 150-watt flashing bulb can be effective under some conditions. Certain devices currently available are designed specifically as visual alarms for deaf people. Deaf people may not need accessibility features other than the emergency alarm connections and communications devices. Thus, rooms, in addition to those accessible for wheelchair users, should also be equipped with emergency visual alarms or connections.

A4.27 Detectable Warnings

A4.27.2 Detectable Warnings on Walking Surfaces. Warnings set slightly more than one pace (24 in to 48 in (610 mm to 1220 mm)) in front of a hazard allow a blind person to perceive the signal, follow through with one last step, and stop before encountering the hazard. People who use long canes will usually detect a textured surface with their cane before they detect it with their feet.

A4.27.3 Tactile Warnings on Doors to Hazardous Areas. Tactile signals for hand reception are useful if it is certain that the signals will be touched.

A4.27.5 Detectable Warnings at Hazardous Vehicular Areas. Curbs on sidewalks serve as customary cues for the edge of a street. The abrupt change in level is easily perceived by a cane or foot.

A4.27.6 Detectable Warnings at Reflecting Pools. Other hazards besides reflecting pools may require similar protection.

A4.27.7 Standardization. Too many detectable and tactile warnings or lack of standardization

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A4.31 AUDITORIUM AND ASSEMBLY AREAS

weakens their usefulness. Detectable and tactile signals can also be visual signals to guide dogs, since dogs can be trained to respond to a large variety of visual cues.

A4.28 Signage

A4.28.1 General. In building complexes where finding locations independently on a routine basis may be a necessity (for example, college campuses), tactile maps or prerecorded instructions can be very helpful to visually impaired people. Several maps and auditory instructions have been developed and tested for specific applications. The type of map or instructions used must be based on the information to be communicated, which depends highly on the type of buildings or users.

Landmarks that can easily be distinguished by visually impaired individuals are useful as orientation cues. Such cues include changes in illumination level, bright colors, unique patterns, wall murals, location of special equipment, or other architectural features (for example, an exterior view).

Many people with disabilities have limitations in movement of their head and reduced peripheral vision. Thus, signage positioned perpendicular to the path of travel is easiest for them to notice. People can generally distinguish signage within an angle of 30 degrees to either side of the centerline of their face without moving their head.

A4.28.2 Character Proportion. The legibility of printed characters is a function of viewing distance, character height, the ratio of the stroke width to the height of the character, the contrast of color between character and background, and print font. The size of characters must be based upon the intended viewing distance. Sans serif typefaces or a simple serif typeface without excessive flourishes or deviation in stroke width have been found to be the most legible. A severely nearsighted person may have to be much closer to see a character of a given size accurately than a person with normal visual acuity.

A4.28.3 Color Contrast. The greatest readability is usually achieved through the use of light-colored characters or symbols on a dark background.

A4.29 Telephones

A4.29.3 Mounting Height. In localities where the dial-tone-first system is in operation, calls can be

placed at a coin telephone through the operator without inserting coins. The operator button is located at a height of 46 in (1170 mm) if the coin slot of the telephone is at 54 in (1370 mm).

A generally available public telephone with a coin slot mounted lower on the equipment would allow universal installation of telephones at a height of 48 in (1220 mm) or less to all operable parts.

A4.29.5 Equipment for Hearing-Impaired People. Other aids for people with hearing impairments are telephones, teleprinter, and other telephonic devices that can be used to transmit printed messages through telephone lines to a teletype printer or television monitor.

A4.30 Seating, Tables, and Work Surfaces

A4.30.4 Height of Work Surfaces. Different types of work require different work surface heights for comfort and optimal performance. Light detailed work, such as writing, requires a work surface close to elbow height for a standing person. Heavy manual work, such as rolling dough, requires a work surface height about 10 in (255 mm) below elbow height for a standing person. The principle of a high work surface for light detailed work and a low work surface for heavy manual work also applies for seated persons; however, the limiting condition for seated manual work is clearance under the work surface.

Table A1 shows convenient work surface heights for seated persons. The great variety of heights for comfort and optimal performance indicates a need for alternatives or a compromise in height if both people who stand and people who sit will be using the same counter area.

A4.31 Auditorium and Assembly Areas

A4.31.2 Size of Wheelchair Locations. Spaces large enough for two wheelchairs allow people who are coming to a performance together to sit together.

A4.31.3 Placement of Wheelchair Locations. The location of wheelchair areas can be planned so that a variety of positions within the seating are provided. This will allow choice in viewing and price categories.

A4.31.6 Placement of Listening Systems. A distance of 50 ft (15 m) allows a person to distinguish performers' facial expressions.

A4.32 DWELLING UNITS

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Table A1
Convenient Heights of
Work Surfaces for Seated People*

Conditions of Use	Short Women		Tall Men	
	in	mm	in	mm
Seated in a wheelchair:				
Manual work:				
Desk or removable armrests	26	660	30	760
Fixed, full-size armrests†	32‡	815	32‡	815
Light, detailed work:				
Desk or removable armrests	29	735	34	865
Fixed, full-size armrests†	32‡	815	34	865
Seated in a 16-in (405-mm)				
-high chair:				
Manual work	26	660	27	685
Light, detailed work	28	710	31	785

*All dimensions are based on a work-surface thickness of 1½ in (38 mm) and a clearance of 1½ in (38 mm) between legs and the underside of a work surface.

†This type of wheelchair arm does not interfere with the positioning of a wheelchair under a work surface.

‡This dimension is limited by the height of the armrests; a lower height would be preferable. Some people in this group prefer lower work surfaces, which require positioning the wheelchair back from the edge of the counter.

A4.32 Dwelling Units (see Table 4)

A4.32.2 Adaptability. Adaptable dwelling units can be particularly beneficial in rental housing where the demand for accessible units may vary over time. Dwelling units designed for adaptability can accommodate either able-bodied residents or residents having any of the disabilities described in 1.1, and have the further advantage of allowing the user to select the degree of accessibility that is desired. For example, an occupant may choose to have grab bars installed in the bathroom but prefer the standard-height counter and sink.

Where parking is provided for facilities with all dwelling units designed for adaptability, accessible parking spaces should be provided according to the

number and particular needs of the disabled residents occupying the adaptable units.

A4.32.3 Basic Components. Handicapped people who live in accessible dwelling units of multifamily buildings or housing projects will want to participate in all on-site social activities, including visiting neighbors in their dwelling units. Hence, any circulation paths among all dwelling units and among all on-site facilities should be as accessible as possible. An accessible second exit to dwelling units provides an extra margin of safety in a fire.

A4.32.4 Bathrooms. Although not required by these specifications, it is important to install grab bars at toilets, bathtubs, and showers if it is known that a dwelling unit will be occupied by elderly or severely disabled people.

A4.32.5 Kitchens

A4.32.5.5 Sink. Installing a sink with a drain at the rear so that plumbing is as close to the wall as possible can provide additional clear knee space for wheelchair users.

A4.32.5.6 Ranges and Cooktops. Although not required for minimum accessibility, countertop range units in a counter with adjustable heights can be an added convenience for wheelchair users.

A4.32.5.7 Ovens. Countertop or wall-mounted ovens with side-opening doors are easier for people in wheelchairs to use. Clear spaces at least 30 in (760 mm) wide under counters at the side of ovens are an added convenience. The pull-out board or fixed shelf under side-opening oven doors provides a resting place for heavy items being moved from the oven to a counter.

A4.32.5.8 Refrigerator/Freezers. Side-by-side refrigerator, freezers provide the most usable freezer compartments. Locating refrigerators so that their doors can swing back 180 degrees is more convenient for wheelchair users.

A4.32.5.10 Kitchen Storage. Full-height cabinets or tall cabinets can be provided rather than cabinets mounted over work counters. Additional storage space located conveniently adjacent to kitchens can be provided to make up for space lost when cabinets under counters are removed.

Federal Register

Friday
June 15, 1990

Part V

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone; Final Rule

**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Part 82**

[FRL-3716-2]

Protection of Stratospheric Ozone**AGENCY:** Environmental Protection Agency.**ACTION:** Final amendment to the final rule.

SUMMARY: Today's notice amends EPA's August 12, 1988 rule (40 CFR part 82) implementing the Montreal Protocol on Substances That Deplete the Ozone Layer, a treaty to limit the production and consumption of chlorofluorocarbons and halons. This amendment conforms EPA's rule with agreements reached by the Parties to the Montreal Protocol concerning the implementation of the Protocol. This amendment expands the definition of exports to include used and recycled controlled substances, grants additional allowances to any person who uses controlled substances as a feedstock for other substances, and requires producers to maintain records of spills or other releases above a de minimis level and include these as part of production.

The Agency proposed these amendments on July 12, 1989 (54 FR 29353). At that time, EPA also proposed an amendment that allowed producers of these chemicals to increase their production for the purposes of "industrial rationalization" and suspended § 82.11 of 40 CFR part 82 that allowed the United States limited increases in its production of controlled substances for exports to Parties. The Agency published the amendment concerning industrial rationalization on February 13, 1990 (55 FR 5007).

During its public comment period, EPA received comments concerning these amendments from eight companies and organizations: four chemical producers (Racon, Pennwalt, Allied-Signal, and Du Pont); three user companies (Vulcan, Ausimont and Halocarbon); and one industry association (Halogenated Solvents Industry Alliance (HSIA)).

EFFECTIVE DATE: June 15, 1990.

FOR FURTHER INFORMATION CONTACT: David Lee, Regulatory and Analysis Branch, Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation, ANR-445, 401 M St. SW., Washington, DC 20460. (202) 475-7497.

SUPPLEMENTARY INFORMATION: On August 12, 1988, EPA promulgated a final rule to limit the production and

consumption of certain chlorofluorocarbons (CFCs) and brominated compounds (halons) to reduce the risks of stratospheric ozone depletion. The rule requires a near-term freeze at 1986 levels of production and consumption (defined as production plus imports minus exports) of CFC-11, -12, -113, -114, and -115 based on their relative ozone depletion weights, followed by a phased reduction to 80 percent and 50 percent of 1986 levels beginning in mid-1993 and mid-1998, respectively. It also limits production and consumption of Halon 1211, 1301, and 2402 to 1986 levels beginning in 1992. Under specified circumstances, limited increases in production (but not consumption) above these levels is permitted.

This rule was promulgated under section 157(b) of the Clean Air Act and constituted the United States' implementation of the Montreal Protocol, which the United States ratified on April 21, 1988. The final rule's control measures took effect when the Protocol entered into force of January 1, 1989.

The rule implements the Protocol's requirements to control production and consumption of the CFCs and halons specified above by allocating production and consumption allowances to firms that produced and imported these chemicals in 1986, based on their 1986 levels of these activities. Producers received potential production allowances equal to 10 percent of their 1986 production levels (15 percent in 1998 for CFCs). These potential production allowances could be converted to production allowances to replace exports to developing country Parties whose per capita consumption of these chemicals is less than .3 kg, or upon receipt of production rights from another Party that has agreed to decrease its production by an equal amount.

Today the Agency amends several sections of this final rule. These amendments are based on agreements concerning implementation of the Montreal Protocol reached by nations that are Parties to the Protocol at their first meeting in Helsinki, Finland, during the week of May 1, 1989.

**The Export of Used or Recycled
Controlled Substances**

The first amendment concerns the final rule's definition of exports. In the final rule published in August 1988, EPA excluded recycled and used control substances from the definition of exports excluded exports of such substances from the reporting requirements, and precluded exporting

companies from claiming additional consumption allowances under § 82.10 and authorization to convert under § 82.11 for exports of such substances. The Agency was concerned at that time that defining exports to include recycled and used controlled substances along with virgin controlled substances would risk U.S. noncompliance with the Protocol. Since the Agency's rule defined production to exclude recycled controlled substances, firms could have recycled those substances without expending production and consumption allowances. However, with exports defined to include recycled substances, when firms exported the recycled substances, they could apply for authorization to convert potential production allowances equal to the amount of the recycled substances exported. Thus, as a result of exporting recycled substances for which no production and consumption allowances were expended, firms would realize a net increase in production allowances (up to the 10 or 15 percent limit on potential production allowances) and consumption allowances. They could then use these additional allowances to produce or import and sell domestically controlled substances in excess of the amount of the initial allocations authorized.

In this amendment, the Agency expands the definition of exports to include recycled or used controlled substances in accordance with the agreement reached by the Parties in Helsinki. The Parties' agreement on the definition of exports allows such countries to export their used controlled substances and then reimport the reprocessed or recycled controlled substance, expending consumption allowances received for exporting the chemicals. The Parties stated that recycling is an important control option to limit the production of additional controlled substances and should be encouraged wherever possible. Minutes to the meeting (Report of the Parties to the Montreal Protocol on the Work of their First Meeting, May 4, 1989), state in section II, 11, H, that "importers and exporters of bulk used controlled substances should be treated and recorded in the same manner as virgin controlled substances and included in the calculation of a Party's consumption limits". The Agency believes that the U.S. domestic program should be consistent with the internationally accepted definitions reached by agreement of the Parties. In this case, the expanded definition of exports benefits domestic recycling companies

that intend to trade in used and recycled controlled substances.

The Agency further believes that defining exports under the U.S. rule to include recycled or used controlled substances will have no adverse effect on stratospheric ozone levels. Controlled substances produced, recycled and exported all in the same control period will not yield a net increase in consumption allowances since consumption allowances were expended and recouped in the same control period. Controlled substances produced, recycled and exported in different control periods will also not affect the ozone layer. A controlled substance eventually recycled could have been released or emitted during the control period when it was produced and when consumption allowances were expended for it. Instead, recycling results in the consumption or use (in the sense of emission) of a substance being transferred from the period it was produced to the period it was exported. Thus, the net effect on the environment would be zero¹ since all that occurred was an inter-temporal transfer of consumption (or emissions) from one control period to another. Since the change will have no adverse environmental effect, and since the Parties to the Protocol have agreed to this definition of exports, the Agency expands the definition of exports in its rule to include used or recycled controlled substances.

Two companies commented on the proposed amendment to expand the definition of exports to include controlled substances that are either used or recycled. Vulcan wrote that the amendment is unclear as to whether or not EPA proposed that recycled and used CFCs would be counted against a company's consumption allowances. The respondent stated that Parties to the Protocol intended that recycled CFCs should not be counted against a country's consumption allowance and that, therefore, EPA should reflect that intent in its final rule.

The amendment establishes that recycled and used CFCs are treated in the same manner as virgin CFCs for purposes of calculating a company's level of consumption allowances. In short, recycled and used controlled substances that a company imports are counted against that company's consumption allowances, while recycled and used controlled substances that a company exports are the basis for

obtaining consumption allowances from EPA. Used controlled substances that are recovered within the United States and then recycled domestically are not affected by this rule.

Allied-Signal commented that only 50 percent of used CFCs imported into the United States can be recycled into re-usable CFCs. Such a discrepancy would discourage U.S. recyclers from importing used materials, and thus hinder other countries in their recycling of controlled substances. Allied-Signal suggested that an importer of used controlled substances should need consumption allowances equivalent to only one-half of the calculated level of used CFCs to import used controlled substances.

However, EPA has received no documentation supporting the claim that only 50 percent of used CFCs can be recycled. The percentage of the controlled substance reclaimed depends on the quality of the used controlled substance and the process used for reclamation or distillation.

Allowances for the Consumption of Controlled Substances as Feedstock

The Agency also amends the final rule to allow persons who consume or transform purchased controlled substances as feedstock for other substances to claim consumption and production allowances equal to the allowances expended for the production or importation of the consumed or transformed controlled substance. Previously, only persons who produce and consume the controlled substance in the production of other substances could exempt the amount of consumed controlled substances from the production and consumption limits set by the final rule.

The Agency stated in its final rule published on August 12, 1988, that tracking controlled substances produced and transformed by different persons would be administratively burdensome and present verification problems for compliance or enforcement proceedings. Furthermore, the Agency could not resolve at the time whether the person who produced the controlled substance or the person who transformed the controlled substance should receive the credit. This issue was even more difficult to resolve where transformations involve controlled substances produced in another country. In March 1988, technical advisors to the Protocol meeting in Nairobi could not agree on which country should be granted credits in the case of transformation of feedstocks traded between countries.

At their meeting in Helsinki in May of 1989, the Parties resolved this issue and

agreed that a Party could exclude from its limits any controlled substance, either imported or manufactured domestically, that the Party entirely uses as feedstock. Minutes to the meeting (Report of the Parties on the Work of their First Meeting, May 4, 1989), state in Paragraph 58 that it is the Parties' understanding "that controlled substances used as chemical feedstocks in the manufacture of other chemicals should be excluded from the calculation of 'controlled substances produced'." Due to this agreement, the Agency amends the final rule to allow companies that use controlled substances as feedstock to claim allowances equal to the allowances expended to import or to produce these substances, regardless of who originally produced or imported the controlled substance. A company that imports or purchases from an importer could request consumption allowances to replace the consumption allowances that were expended for the import of consumed controlled substances. A company that purchases controlled substances from a producer could request both production and consumption allowances to replace those allowances expended in the production of the consumed controlled substances.

The final rule already provides that producers of controlled substances may subtract from their production and consumption the calculated level of controlled substances produced by that company that are consumed as feedstocks by that company. In accordance with the decision that purchasers of controlled substances receive allowances for controlled substances that are consumed, the Agency will allow a producer of controlled substances who consumes controlled substances produced by a different person to subtract that level of controlled substance from its calculated levels of production and consumption.

The Agency understands that consumption of a feedstock requires the alteration of the molecular structure of the controlled substance resulting in a different chemical. This will disallow claims of consumption in which a controlled substance is merely blended with other substances resulting in a stable mixture of the original controlled substance with other substances.

Vulcan and the Halogenated Solvents Industry Alliance supported the proposed amendment to allow credit for controlled substances which are consumed in the production of other substances.

¹ There is a chance for increased production up to the 10 percent cap, for the export of used or recycled controlled substances produced prior to July 1, 1989.

Two companies commented on the administrative burden of complying with the proposed regulation. Both Halocarbon (directly and through legal counsel) and Ausimont commented that EPA's proposed rule regarding the transformation of controlled substances was "cumbersome" because a company must transform the controlled substance before it is granted additional allowances. Halocarbon stated that the Protocol does not require any elaborate application and documentation procedure of such a transformation. Both companies requested that EPA grant additional allowances prior to the actual consumption of the controlled substances. Halocarbon requested that it receive the treatment that is believed was accorded to producers, that is, that producers need not consume controlled substances before exempting their production from the regulatory limits.

In response, the Agency states that in the case of producers and nonproducers, credit for transformation is available only after the transformation has occurred, not prior to the transformation. The Agency believes that the environment would be at risk if credit for transformation were extended prior to the transformation since transformation might not occur after all. Halocarbon noted that EPA could inspect plants on a routine basis to ensure compliance, but the Agency notes that if a violation does occur it may be difficult to remedy the environmental effects. For this reason, EPA insists that transformation occur before the Agency will grant production and/or consumption allowances to the transforming company.

Furthermore, the Agency notes that this administrative approach of granting allowances after transformation is consistent with other procedures for granting additional allowances. Exporters must prove to EPA that an export of controlled substances has occurred before the Agency will grant additional consumption allowances under 40 CFR 82.10 and additional production allowances under 40 CFR 82.11. Contrary to Halocarbon's comments, producers can exempt the production of controlled substances from their reported production only after the transformation has occurred under 40 CFR 82.3 and 82.13.

Ausimont and Halocarbon wrote that a company that does not have an initial quota from which to draw must pay a high price to obtain allowances (assuming such allowances are available for trade), while Halocarbon further stated that producing companies would not be willing to sell CFCs for

transformation unless they were given additional allowances in advance. Both Ausimont and Halocarbon suggested that the proposed amendment provide for some kind of transformation allowances allocated initially to companies that intend to transform controlled substances.

The Agency believes that industry's comments do not reflect the likely dynamics of the market. There is no reason to believe that producers would not sell controlled substances for transformation purposes without first being provided additional allowances, but would sell controlled substances for other purposes without being provided such allowances. In a free market producers are most likely to sell controlled substances to whomever will pay the market-clearing price, regardless of their intended use for the chemicals. Indeed, given that transformation will yield additional production allowances, producers and transformers could establish a contractual relationship whereby the transforming company would agree to transfer allowances to the producer obtained for the transformation in exchange for a below market price for the controlled substance to be transformed. If companies are unable to establish such a relationship, then transforming companies may initially need to pay the market price for controlled substances. However, once the transformers have consumed these chemicals and obtained allowances from EPA, the companies could sell the allowances to producers, recouping part of the purchase price of the CFCs. In fact, once a company obtains allowances for transformation, the company may trade these allowances to any importer or producer in exchange for controlled substances.

Both respondents commented that even if the company can find another company willing to sell or trade, there remains a timing problem in that the company would have to complete buying domestically or importing, transforming and applying for additional allowances, all within the same control period.

The Agency emphasizes that the timing and procedure for purchasing and transforming controlled substances and the subsequent submission of the request for allowances to EPA and their trade are business decisions, and that the rule provides some flexibility for industry to plan their production schedules accordingly. The Agency will grant additional allowances for transformation only for the control period in which transformation occurs. Indeed, companies may find this limiting

if they intend to transform controlled substances during the last days of the control period when there is insufficient time to request, receive and trade allowances to replace those consumed chemicals. However, the rule allows companies to purchase controlled substances in one control period that could be transformed in the next control period. In this scenario, the Agency would grant additional allowances in the second control period for transformed controlled substances produced in the first. The Agency believes that companies could plan accordingly to ensure sufficient time to obtain additional allowances to replace those controlled substances consumed in the production of other chemicals. Exporters who desire additional consumption allowances under 40 CFR 82.10 also face the same timing problem.

Halocarbon and Ausimont further commented that the proposed amendment would inhibit or even prohibit the use of CFC feedstocks to make CFC substitutes by non-producers of CFCs. Commenters were concerned that producers who are developing substitutes may exclude other manufacturers from this market by depriving competing companies from controlled substance feedstocks. However, the Agency is not aware of how the rule will inhibit the use of CFC feedstock to make CFC substitutes by non-producers. If the commenters believe that producers will deny feedstock to non-producers to prevent competition, the Agency notes that such a situation would exist absent this rule regarding credit for transformation of controlled substances.

Both companies proposed procedures to grant allowances prior to transformation. Halocarbon recommended that CFCs produced for feedstock use be excluded from the allocated production quotas for controlled substances. Specifically, Halocarbon proposed that a user of CFCs for feedstocks apply to EPA for a document certifying that it may purchase controlled substances which will not count against a producer's allowances. Halocarbon suggests that EPA accept applications from non-producing feedstock users for "authority" to buy limited quantities of controlled substances "outside of allocations." The amount would be specified by EPA as "an acceptable de minimis" (Halocarbon recommends a de minimis level of two million kilograms). Ausimont suggested that such transformation allowances would be issued to a specific company based on information of intended transformation,

would be non-transferable, and would be renewed annually. Producers or importers could then apply to EPA for transformation credits once transformers had bought controlled substances from them with transformation allowances.

The Agency again states that it cannot grant allowances to companies for controlled substances to be transformed at a later date. Such an approach would be administratively impractical; how, for instance, would the Agency determine whether any particular company should be granted allowances to buy controlled substances "outside allocation" and in what amounts? It is not clear that the Agency could or should rely on a company's historical transformation rate or production plans to grant such authority; use of historical rates could preclude new entrants in the market and not reflect current demand, and production plans do not provide assurances that what is produced will all be sold. As noted above, granting credit before transformation occurred would be inconsistent with other provisions of the rule granting allowances and increases the likelihood of potential violation of the Montreal Protocol.

Halocarbon questioned the need for the Agency to define the transformation component of the definition of production to cover only controlled substances that have been wholly used and consumed. While Halocarbon recognized the importance of preventing overproduction under the Protocol, Halocarbon suggested that this is not adequate justification for the definition, based upon EPA's "ample investigative and enforcement powers."

The Agency believes the prevention of any meaningful risk of overproduction to be more than sufficient justification for the amendment. In addition, it would be administratively cumbersome to grant pre-transformation allowances, and then audit transformers to assure that transformation occurred.

In another proposed application scheme, Halocarbon recommended that companies file a document which gives a prototype disclosure of its repetitive process, eliminating numerous repetitive filings which are duplicative in all respects except dates and amounts. Although the Agency believes that such a document providing a prototype disclosure of its repetitive process is one alternative, EPA believes that the required information is not excessive, and that the affected company can easily generate duplicative filings using word processors.

Halocarbon also commented that the proposal failed to specify the period

during which the EPA must act on requests for allowances and to provide an appeal process similar to the one required under 40 CFR 82.12 for transfers. In response, the Agency intends to process such reports promptly upon their receipt. However, the Agency emphasizes that the review of transfer requests under § 82.12 and the review of a request for additional allowances are not the same. To review transfer requests under § 82.12, the Agency reviews internal EPA records to determine any outstanding compliance issues and whether sufficient allowances exist. To approve additional allowances whether for transformation or for exports, the Agency must review business documents that may be incomplete or incorrect, or may have numerous transactions. Such review does require substantial time if there are meaningful problems with the submission. However, the Agency believes that an appeal process may benefit companies who are denied allowances for compliance issues, and the Agency has established such a process.

If the Agency initially disallows a request for allowances for the transformation of controlled substances, the disallowance may be appealed to the Director, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation, within 10 days of the disallowance.

Spills and Ventings

In establishing the baseline for the allocation of the 1986 production allowances, the Agency requested that companies report their production levels for 1986. Since the Protocol sets limits on production (and consumption) as a means of limiting stratospheric ozone depletion, the Agency intended that production data include all controlled substances produced, whether sold or spilled/vented. Both spilled and sold controlled substances has equal impacts on ozone depletion. At least one company confirmed with EPA before submitting its report that production data should include spills.

However, EPA has since learned that some producers did not include spills in their reported production levels, instead counting only that production actually sold plus change in inventories. These companies have commented in this rulemaking that since they received no production allowance for their 1986 spills, they should not have spills counted against them in the future.

First, it should be noted that the Agency distinguishes between spills or ventings and fugitive emissions. The final guidance document for the

stratospheric ozone protection program defines fugitive emissions as "emissions that occur in the ordinary course of the production process as a result of leaks from flanges or valves." It is not the intent of EPA to include such emissions as spills. As noted by one producer, fugitive emission release estimates are based on the best engineering practices available and are difficult to quantify accurately. Because such emission releases are very small in volume and impractical to quantify, EPA decided that they need not be reported.

EPA regrets that several companies failed to include spilled controlled substances in their reported 1986 production volumes as noted in their comments. The dictionary definition of "production" is that which is made or the total output of a company or industry; the definition does not exclude from production that which is not sold. Moreover, given the Protocol's approach of limiting emissions of controlled substances by limiting production (as well as consumption), the need for reported production to include both sold and spilled substances could and should have been inferred.

EPA has decided against reopening companies' reported 1986 production levels to allow companies that failed to report spills to obtain an increase in their production allowances. The Agency afforded companies ample opportunity between its December 1987 request for production data and its August 1988 final rule allocating production allowances to provide complete and accurate data on which to base their production allowance allocations. In addition, the United States has already complied with Article 7 of the Protocol which required that each Party report its total 1986 production to the Protocol Secretariat by April 1989, and it is not clear that the United States could change its report in order to increase its allowable production after the first control period (July 1, 1989 to June 30, 1990) has begun.

At the same time, EPA cannot permit these companies to exclude spills from their reported production in the future. As noted above, spilled controlled substances are no different from sold controlled substances in their ability to deplete ozone. Excluding spills could result in the U.S. exceeding its allocation under the Protocol, and thereby jeopardize compliance with the Protocol. The Agency recognizes that producers have an economic incentive to minimize the number and volume of spills. However, excluding spills from reported production could allow producers who produced in excess of

their production limits to reduce reported production by venting or spilling the excess amounts.

EPA, however, has decided not to require reporting of de minimis spills, i.e., that level of spills that under routine operating procedures cannot be detected in time to avoid and that cannot, as a result, be accurately quantified. The Agency has set the de minimis level of release at 100 pounds (45 kilograms) per spill. This de minimis level is based on information received from public comments and by independent EPA data. This information indicates that minor leaks can be reasonably inspected and resolved prior to the release of 100 pounds of controlled substance. Additionally, data received by EPA indicates that producers can readily measure and record quantities of controlled substances spilled or released to at least 100 pounds (in fact, some data indicates the ability to estimate quantities released down to less than 10 pounds). The selection of a 100 pound de-minimis level effectively exempts spills which EPA would consider to be ordinary leaks for the purposes of this regulation.

The Agency notes the wide range of de minimis levels suggested by respondents. One producer suggested a de minimis level of 3,000 pounds, stating that their current reported production already reflected losses under this amount. Others suggested a de minimis level of 5,000 pounds for an episodic spill over a 24-hour period based on the recordkeeping requirement under Comprehensive Environmental Response Compensation Liability Act (CERCLA) for Reportable Quantities. The Agency believes, however, that the approach taken to de minimis spills under CERCLA is not relevant to this rule. The de minimis level of 5,000 pounds set under the Superfund Program was based on such chemical properties as toxicity, carcinogenicity, and reactivity, but not on ozone depletion potential. While releases of 5,000 pounds per day may not pose a significant toxicity hazard, it may be significant in terms of ozone depletion. Under such a level, one company could spill, in theory, a calculated level of up to 826,321 kilograms of controlled substances over a single control period without it counting toward their production. However no company seeking a profit would presently allow this kind of spill rate to persist.

EPA does, however, acknowledge that ventings or spills of greater than 100 pounds may occur infrequently at well operated plants as a result of overpressurized equipment. Therefore,

EPA will excuse two ventings or spills of controlled substances per plant over the de-minimis level of 100 pounds, for a given control period, if these individual ventings or spills are less than 1000 pounds each. The EPA has based this production exemption on information reported by one large producing plant that indicated that spills greater than 100 pounds were infrequent and most likely average less than two a year, and that spills greater than 1000 pounds were rare. In addition, this exempted volume represents much less than 1 percent of each producer's annual production.

Thus, based upon the available evidence in the rulemaking record, a de-minimis level is set at 100 pounds (45 kilograms) per spill. As clarified by amendment of the recordkeeping requirements at § 82.13, all spills or releases over 100 pounds must be recorded. EPA, by amendment to the definition of production, is clarifying that spills or ventings over this 100 pounds de-minimis level will count against allowable production (and therefore consumption). However, as specified in the amended definition of production, each production plant is allowed two separate ventings or spills of less than 1000 pounds each, in each given control period, which will not be counted as production.

Destruction

Finally, companies commented on destruction technologies for controlled substances. Vulcan wrote that EPA should consider amending the regulation to incorporate the destruction of controlled substances by the facility producing a controlled substance. The respondent stated that incineration would be applicable technology for the destruction of CFCs. The Halogenated Solvents Industry Alliance also commented on the incineration of CFCs and suggested that EPA encourage credit for destroyed controlled substances.

In response, the Agency notes under the Protocol that the Parties must approve destruction technologies before a Party may claim credit for destroying controlled substances. The Parties to the Montreal Protocol have not as yet decided on the nature of destruction technology. The Agency must thus await the decisions of the Parties.

Final Amendment

Today EPA modifies four sections of the final regulation. The Agency amends § 82.3(h) which defines the exports of controlled substances. The final rule is amended to include recycled and used control substances in the definition of

requirements, and permit exporting companies to claim additional consumption allowances under § 82.10 and authorization to convert under § 82.11 for exports of such substances. Section 82.10(a) was also modified to delete the phrase "(other than recycled or used controlled substances)". The deletion of this phrase provides consistent regulatory language throughout the rule to allow exporters to claim consumption allowances for the export of used or recycled controlled substances.

Since exports during the current control period prior to this amendment may meet the conditions of this amendment, EPA will grant additional consumption allowances for past exports of used or recycled controlled substances. The Agency believes that firms that have met the conditions of today's amendment should be permitted, as other Parties' firms already have, additional consumption allowances under the terms of the Protocol.

The Agency also amends the final rule to allow persons who consume or transform purchased controlled substances as feedstock for other substances to claim an allowance credit equal to the allowances expended for the production or importation of the transformed controlled substances (§§ 82.9(e) and 82.10(c)).

Persons that use and fully consume controlled substances as feedstock can claim allowance credits equal to the allowances that were expended to either import or produce these substances, regardless of who originally produced or imported the controlled substance. To receive these allowances, a person must report the name, quantity and calculated level of controlled substance entirely consumed in the manufacture of another substance, the name of the resulting product of the transformation, the quantity of the product transformed, and indicate that the product is used commercially. The person must also submit a copy of the invoice or receipt documenting the purchase of the controlled substances that were transformed and such other information as may be necessary to trace the origin of the controlled substance. The Agency requires such information to determine whether production and consumption allowances were expended for the domestic use of the controlled substance, and to verify that the controlled substance was transformed into another substance rather than destroyed. Persons who do request additional consumption and production allowances must maintain dated records of the type and quantity of the

controlled substance transformed, the quantity of the resulting product, and any shipping records that verify the sale of the resulting product (§ 82.13(h)).

After reviewing this information, the Agency will issue a notice granting additional consumption allowances for consumed controlled substances that were imported, or additional production and consumption allowances for consumption of controlled substances that were produced domestically. Granted allowances will equal the calculated level of the controlled substance entirely consumed, and will only be valid for the control period in which the consumption occurred. Such allowances will entitle the holder to either produce or import additional controlled substances and may be traded to other persons under 40 CFR 82.12. Due to comments requesting an appeal process for disallowed requests for additional allowances for transformation, the Agency has included a 10-day appeal procedure by which companies can petition the Director of the Office of Atmospheric and Indoor Air Programs to reconsider the disallowance.

An additional recordkeeping requirement for spills equal to or greater than 100 pounds is required under § 82.13(f)(2)(vii). The definition of production in § 82.3 is amended to include these spills; however, the industry may exempt two separate spills or ventings, each under 1000 pounds, from reporting production at each plant.

The current wording of the recordkeeping and reporting requirements at § 82.13(f)(2)(ii) and (f)(3)(i) is already broad enough to apply to all producers, whether or not the controlled substance used as feedstock was manufactured by that person. Therefore, in order to qualify for credit for the consumption of feedstocks, producers need to keep the records and make the reports required by § 82.13(f)(2)(ii) and § 82.13(f)(3)(i) as well as § 82.13(h).

1. Executive Order 12291

Executive Order (E.O.) 12291 requires the preparation of a regulatory impact analysis for major rules, defined by the order as those likely to result in: (1) An annual effect on the economy of \$100 million or more; (2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic industries; or (3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises to compete with foreign

based enterprises in domestic or export markets.

EPA determined that its August 12, 1988 final rule to protect stratospheric ozone met with the definition of a major rule, and therefore prepared a regulatory impact analysis (RIA). Since these amendments do not impose any significant burdens as defined by E.O. 12291, the RIA prepared for the final rule fulfills the executive order's requirement for these amendments.

2. Paperwork Reduction Act

Changes to the information requirements as amended in today's notice have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request document has been prepared by EPA (ICR No. 1432.04) and a copy may be obtained by writing Sandy Farmer, Information Policy Branch, EPA; 401 M St. SW. (PM-223); Washington, DC 20460 or by calling (202) 382-2468.

Public reporting burden for this collection of information is estimated to increase an average of 3 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Paperwork Reduction Project (2060-0170), Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

3. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires that federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of the agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b). EPA prepared an initial RFA in support of its final rule, and no additional RFA was prepared for these amendments.

Dated: June 7, 1990.

William K. Reilly,
Administrator.

PART 82—PROTECTION OF STRATOSPHERIC OZONE

For reasons set forth in the preamble, the Agency proposes to amend 40 CFR part 82 as follows:

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7457(b).

2. Amend § 82.3 to revise paragraphs (h) and (s) to read as follows:

§ 82.3 Definitions.

(h) *Export* means the transport of virgin, used or recycled controlled substances from inside the United States or its territories to persons outside the United States or its territories, excluding United States military bases and ships for on-board use.

(s) *Production* means the manufacture * * * by the same person of other chemicals. Production includes spilling or venting of controlled substances equal to or in excess of one hundred pounds per event; however each production plant is allowed two spills or ventings of less than 1000 pounds, within a given control period.

3. Section 82.9 is amended by adding paragraph (e) to read as follows:

§ 82.9 Availability of production allowances in addition to baseline production allowances.

(e) A person who does not produce controlled substances may obtain production allowances equal to the calculated level of controlled substances produced in the United States that the person used and entirely consumed in the manufacture of other chemicals in accordance with the provisions of this paragraph. A request for production allowances under this section will be considered a request for consumption allowances under § 82.10(c).

(1) A person must submit a request for production allowances that includes the following:

- (i) The identity and address of the person;
- (ii) The name, quantity and calculated level of controlled substance used and entirely consumed in the manufacture of another chemical;
- (iii) A copy of the invoice or receipt documenting the sale from the producer of the controlled substance to the person; and

(iv) The name, quantity and verification of the commercial use of the resulting chemical.

(2) The Administrator's designated representative will review the information and documentation submitted under paragraph (1) of this section, and will assess the quantity of controlled substance that the documentation and information verifies were used and entirely consumed in the manufacture of other chemicals. The Administrator's designated representative will issue the person production allowances equivalent to the calculated level of controlled substances that the Administrator's designated representative determined were consumed. The grant of allowances will be effective on the date that the notice is issued.

(3) If the Administrator's designated representative determines that the request for production allowances does not satisfactorily meet the requirements stated in paragraph (e) of this section, the Administrator's designated representative will issue a note disallowing the request for additional consumption allowances. Within ten working days after receipt of notification, the party may file a notice of appeal, with supporting reasons, with the Director, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation. The Director may affirm the disallowance or grant an allowance, as he finds appropriate in light of the available evidence.

4. Amend § 82.10 by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 82.10 Availability of consumption allowances in addition to baseline consumption allowances.

(a) Except as limited by paragraph (b) of this section, any person may obtain, in accordance with the provisions of this subsection, consumption allowances equivalent to the calculated level of controlled substances that the person has exported from the United States and its territories. The consumption

allowance granted under this section will be valid only during the control period in which the exports departed the United States or its territories.

(c) A person who does not produce controlled substances may obtain consumption allowances equal to the calculated level of a controlled substance either produced in or imported into the United States that the person used and entirely consumed in the manufacture of other chemicals in accordance with the provisions of this paragraph.

(1) A person must submit a request for consumption allowances that includes the following:

(i) The identity and address of the person;

(ii) The name, quantity and calculated level of controlled substance used and entirely consumed in the manufacture of another chemical;

(iii) A copy of the invoice or receipt documenting the sale from the producer or importer of the controlled substance to the person;

(iv) The name, quantity and verification of the commercial use of the resulting chemical.

(2) The Administrator's designated representative will review the information and documentation submitted under paragraph (c) of this section, and will assess the quantity of controlled substance that the documentation and information verifies were used and entirely consumed in the manufacture of other chemicals. The Administrator's designated representative will issue the person consumption allowances equivalent to the calculated level of controlled substances that the Administrator's designated representative determined were consumed. The grant of allowances will be effective on the date that the notice is issued.

(3) If the Administrator's designated representative determines that the request for consumption allowances does not satisfactorily meet the

requirements stated in paragraph (c) of this section, the Administrator's designated representative will issue a note disallowing the request for additional consumption allowances. Within ten working days after receipt of notification, the party may file a notice of appeal, with supporting reasons, with the Director, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation. The Director may affirm or vacate the disallowance. If no appeal is taken by the tenth day after notification, the disallowance will be final on that day.

5. Amend § 82.13 by adding paragraphs (f)(2) (vii) and (h) to read as follows:

§ 82.13 Recordkeeping and reporting requirements.

• • • • •

(f) • • •

(2) • • •

(vii) Records of the date, the controlled substance, and the estimated quantity of any spill or release of a controlled substance that equals or exceeds 100 pounds.

• • • • •

(h) Every person who has requested additional production allowances under § 82.9(e) or consumption allowances under § 82.10(c), or producers who purchase controlled substances used or consumed as feedstock for other substances must maintain the following:

(1) dated records of the quantity and calculated level of controlled substance used and entirely consumed in the manufacture of another chemical;

(2) copies of the invoices or receipts documenting the sale from the producer or importer of the controlled substance to the person;

(3) dated records of the names, commercial use and quantities of the resulting chemical(s); and

(4) dated records of shipments to purchasers of the resulting chemical(s).

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Best Start Federal Letter

Friday
June 15, 1990

Part VI

Department of Health and Human Services

Office of Community Services

**Request for Applications Under Fiscal
Year 1990 Training and Technical
Assistance Program; Notice**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

[Program Announcement No. OCS 90-3]

Request for Applications Under Fiscal Year 1990 Training and Technical Assistance Program

AGENCY: Office of Community Services, Family Support Administration, Department of Health and Human Services.

ACTION: Request for applications under the Office of Community Services' Training and Technical Assistance Program.

SUMMARY: The Office of Community Services (OCS) announces that competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under section 681(a)(3) of the Community Services Block Grant Act of 1981 (title VI of Public Law 97-35, the Omnibus Budget Reconciliation Act of 1981, as amended, 42 U.S.C. 9910(a)(3)). This Program Announcement consists of seven parts. Part A covers information on the legislative authority and defines terms used in the Program Announcement. Part B describes the types of activities that will be considered for funding. Part C provides details on who is eligible to apply and application prerequisites. Part D provides information on application procedures including the availability of forms, where to submit an application, criteria for initial screening of applications, and project evaluation criteria. Part E provides guidance on the content of an application package and the application itself. Part F provides instructions for completing an application. Part G details post-award requirements.

CLOSING DATE: The closing date for submission of applications is August 14, 1990.

FOR FURTHER INFORMATION CONTACT: Mae Brooks, Division of Block Grants, Office of Community Services, Family Support Administration, 370 L'Enfant Promenade SW., Washington, DC 20447. You may also call (202) 252-5255.

Part A—Preamble

1. Legislative Authority

Section 681(a)(3) of the Community Services Block Grant (CSBG) Act authorizes the Secretary of Health and Human Services to make funds available to States and public and private nonprofit organizations to provide for training and technical

assistance to aid States in carrying out their responsibilities under the CSBG Act.

2. Definitions of Terms

For purposes of this Program Announcement the following definitions apply:

"Training" is an educational activity or event which is designed to impart knowledge, understanding, or increase the development of skills. Such training activities may be in the form of assembled events such as workshops, seminars, or programs of self-instructional activities.

"Technical assistance" is a problem-solving event generally utilizing the services of an expert. Such services may be provided on-site, by telephone, or through other communications. These services address specific problems and are intended to assist with the immediate resolution of a given problem or set of problems.

"State" means the several States and the District of Columbia. Except where specifically noted, for purposes of this Program Announcement it also means "Territory."

"Territory" refers to the Commonwealth of Puerto Rico, the American Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau.

"Local service providers" are the approximately 1,000 local public or private nonprofit agencies that receive Community Services Block Grant funds from States to provide services to, or undertake activities on behalf of, low income people.

Part B—Purpose

Section 681(a)(3) of the CSBG Act authorizes the Secretary of the Department of Health and Human Services to make grants, loans or guarantees to States and public agencies and private nonprofit organizations, or to enter into contracts or jointly financed cooperative arrangements with States and public agencies and private nonprofit organizations, to provide for training and technical assistance to aid States in carrying out their responsibilities for conducting and administering the CSBG Program.

OCS is soliciting applications which implement this legislative mandate on a national basis. Proposed projects under this Program Announcement must focus on one of the following program priorities:

(1) The development of a training and technical assistance program to assist staff of local service providers to acquire the skills and information

needed to solve management and programmatic problems. In addition to on-site training, OCS is interested in the development of self-instructional materials in the areas of fiscal, program, or personnel management. The programs must include the provision of T&TA to staff of a significant number of local service providers in the most cost effective manner possible. Collaboration with State CSBG coordinators and local service providers will be required in identifying the training and technical assistance needs of staff of local service providers; or

(2) The collection, analysis, and dissemination of information on FY 1989 CSBG Programs on a nationwide basis through a process that relies on voluntary State cooperation. The information must be comprehensive enough and disseminated in such a format as to enable States and local service providers to improve their planning, management, and delivery of services.

Applicant must include the method of selection and a justification for all contracts under this Announcement. Submissions which propose the use of grant funds for the development of any printed or visual materials must contain convincing evidence that these materials are not available from other sources. OCS will not provide funding for such items if justification is not sufficient. Any films or visual presentations approved for development under the grant must be submitted to the Office of Community Services for clearance prior to dissemination.

See part F, section 4, for special instructions on developing a work program.

Part C—Application Prerequisites

1. Eligible Applicants

Eligible applicants are States, public agencies and private nonprofit organizations with a demonstrated ability to successfully develop and implement programs and activities similar to those enumerated above.

OCS encourages Historically Black Colleges and Universities to submit applications.

2. Available Funds

The amount of funds available for grant awards under the T&TA Program in FY 90 is \$234,877. We expect to award \$134,877 for priority number one (1) and \$100,000 for priority number two (2).

3. Mobilization of Resources

OCS would like to mobilize as many resources as possible to enhance projects funded under this program.

Proposals submitted by applicants whose programs will leverage other resources, either cash or third party in-kind, will be looked upon favorably and will be eligible to receive additional points in the competitive review process.

4. Grant Duration

OCS will grant funds for a 12-month project and budget periods. The application must clearly demonstrate that the project work plan will achieve measurable results and can be successfully completed within one year.

5. Project Beneficiaries

Projects proposed for funding under the training and technical assistance priority area must result in direct benefits to staff of local service providers in carrying out their responsibilities under the Community Services Block Grant Act.

6. Number of Projects in Application

An application may contain only one project and this project must address one of the purposes found in part B. Applications which are not in compliance with these requirements will be ineligible for funding.

7. Sub-Contracting or Delegating Projects

OCS does not anticipate funding any project where the role of the eligible applicant is primarily to serve as a conduit for funds to organizations other than the applicant.

Part D—Application Procedures

1. Availability of Forms

Attachments A, B and C contain all of the standard forms necessary for the application for awards under these OCS programs. These forms may be photocopied for use in developing the application.

Copies of the **Federal Register** containing this announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources, they may be obtained by writing or telephoning the office listed under the section entitled "**FOR FURTHER INFORMATION**" at the beginning of this announcement.

For purposes of this announcement, all applicants will use SF-424, SF-424A, and SF-424B. Instructions for completing the SF-424, SF-424A, and SF-424B are found in Attachments A, B, and C and part F.

Part F contains instructions for the project narrative. The project narrative

will be submitted on plain bond paper along with the SF-424 and related forms.

Attachment I provides a checklist to aid applicants in preparing a complete application package for OCS.

The application will consist of:
(a) Standard Form 424, "Application for Federal Assistance" (SF-424);
(b) "Budget Information-Non-Construction Programs" (SF-424A);
(c) "Assurances-Non-Construction Programs" (SF-424B);
(d) The Project Narrative.

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments D and E.

2. Application Submission

Refer to the section entitled "CLOSING DATE" at the beginning of this Program Announcement for the last day on which applications may be submitted. Applications may be mailed to: Family Support Administration, Office of Grants Management, 6th Floor OFM/DGM, 370 L'Enfant Promenade, SW, Washington, DC 20447.

Hand-delivered applications are accepted during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays, on or prior to the established closing date at: Family Support Administration, Office of Grants Management, Sixth Floor, 901 D street, SW, Washington, DC 20447.

An application will be considered to be received on time if sent on or before the closing date as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier. Private metered postmarks will not be considered acceptable as proof of timely mailing. Applications submitted by any means other than through the U.S. Postal Service or commercial carrier shall be considered as acceptable only if physically received at the above address before close of business on or before the deadline date.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, applicants should check with their local post office.

Late applications will be returned to the senders without consideration in the competition.

Applications once submitted are considered final and no additional materials will be accepted by OCS.

One signed original application and four copies are required. The first page of the SF-424 must contain in the lower right hand corner the following designations:

TA—for applications proposing priority one activities.

DT—for applications proposing priority two activities.

3. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs" and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alaska, Idaho, Kansas, Minnesota, Nebraska, Virginia, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these eight jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions, so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424A, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards. Therefore, the comment period for State processes will end 60 days from the date of publication of this Announcement to allow time for FSA to review, consider and attempt to accommodate SPOC input. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule under 45 CFR 100.10.

When comments are submitted directly to FSA, they should be addressed to: Department of Health and Human Services, Family Support Administration, Office of Grants Management, 6th Floor, 370 L'Enfant Promenade SW., Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Appendix G of this announcement.

4. Application Consideration

Applications which meet the screening requirements in Section 5a below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program guidelines and evaluation criteria published in this announcement.

Applications will be reviewed by persons outside of the OCS unit which would be directly responsible for programmatic management of the grant. The results of these reviews will assist OCS in considering competing applications. Reviewer's scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will generally be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since the other factors deemed relevant may be considered including, but not limited to, comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

5. Criteria for Screening Applications

a. Initial Screening

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain a Standard Form 424 "Application for Federal Assistance" (SF-424), a budget (SF-424A), and signed "Assurances" (SF-424B) completed according to instructions published in Part F and Attachments A, B, and C of this program announcement.

(2) A project narrative must also accompany the standard forms.

(3) The SF-424 and the SF-424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

b. Pre-rating Review

Applications which pass the initial screening will be forwarded to reviewers and/or OCS staff to verify prior to the programmatic review, that the applications comply with this Program Announcement in the following areas:

(1) *Eligibility:* Applicant meets the eligibility requirements found in part C. Applicant also must be aware that the applicant's legal name as required on the SF-424 (Item 5) must match that listed as corresponding to the Employer Identification Number (Item 6).

(2) *Number of Projects:* The application contains only one project.

(3) *Target Populations:* The application clearly targets the specific outcomes and benefits of the project to State recipients of CSBG funds and/or local providers of CSBG services and activities.

(4) *Program Focus:* The application addresses one of the priorities described in Part B of this announcement.

An application may be disqualified from the competition and returned to the applicant if it does not conform to one or more of the above requirements.

c. Evaluation Criteria

Applications which pass the pre-rating review will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and major weaknesses under each applicable criterion published in this announcement.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements contained in Part B. (Note: The following review criteria reiterate collection of information requirements contained in Part F of this announcement. These requirements are approved under OMB Control Number 0970-0062.)

Criteria for Review and Evaluation of Applications Submitted Under This Program Announcement

(1) *Criterion I: Analysis of needs/priorities* (Maximum: 10 points).

Nature and extent of problem are adequately described and documented.

(2) *Criterion II: Adequacy of Work Program* (Maximum: 35 points).

(a) Goals are appropriately related to needs and are specific and measurable (0-10 points).

(b) Activities are adequately described and appropriately related to goals (0-15 points).

(c) Time frames and chronology of key activities are realistic (0-2 points).

(d) The plan for disseminating the information resulting from the project to CSBG grantees, local service providers, and other interested parties is workable and assures that all relevant parties are included in the dissemination. (0-4 points).

(e) The plan for conducting an assessment that will determine the degree to which the stated goals and objectives of the project are achieved is adequate and workable. (0-4 points).

(3) *Criterion III: Significant and Beneficial Impact* (Maximum: 30 points).

(a) Applicant adequately describes how the project will assure long-term program and management improvements for States and/or local providers of CSBG services and activities (0-11 points).

(b) *Applicable to priority one applications only:* The project will impact on a significant number of local service providers (0-11 points).

(c) *Applicable to priority two applications only:* The applicant has the ability to collect data from a significant number of States. (0-11 points).

(d) Project will leverage or mobilize other resources (0-7 points).

(4) *Criterion V: Ability of Applicant to Perform* (Maximum: 20 points).

(a) Quality of staff is such that applicant will be able to operate the project effectively and efficiently (0-10 points).

(b) The application demonstrates that the applicant has experience relevant to the activities that it proposes to undertake (0-10 points).

(5) *Criterion VI: Adequacy of Budget* (Maximum: 5 points).

(a) The resources requested are reasonable and adequate to accomplish the project (0-3 points).

(b) Total costs are reasonable and consistent with anticipated results (0-2 points).

Part E—Contents of Application and Receipt Process

1. Contents of Application

Each application, must include one original and four additional copies of the following:

a. A signed "Application for Federal Assistance" (SF-424);

b. "Budget Information-Non-Construction Programs" (SF-424A);

c. A signed "Assurances-Non-Construction Programs" (SF-424B);
 d. A Project Narrative consisting of the following elements preceded by a consecutively numbered Table of Contents that will describe the project in the following order:

- (i) Analysis of Need
- (ii) Work Program
- (iii) Program Experience
- (iv) Staffing and Resources
- (v) Appendices including By-Laws; Articles of Incorporation; résumés, etc.

The original must bear the signature of the authorizing official representing the applicant organization.

The total number of pages for the entire application package should not exceed 30 pages.

Applications should be submitted in ring-binders that will allow for easy separation and reassembly.

Application must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on white 8½ × 11 inch paper only. They must not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They will be discarded if included.

All applicants will receive an acknowledgement postcard with an assigned identification number. Applicants are requested to supply a self-addressed mailing label with their application which can be attached to this acknowledgement post-card. This number and the program priority area letter code must be referred to in all subsequent communications with OCS concerning the application. If an acknowledgement is not received within three weeks after the deadline date, please notify FSA by telephone at (202) 252-4586.

Part F—Instructions for Completing Applications

(Approved by the Office of Management and Budget under Control Number 0970-0062)

The standard forms attached to this announcement shall be used to apply for funds under this announcement.

It is suggested that you reproduce the SF-424 and SF-424A (Attachments A and B) and type your application on the copy.

If an item cannot be answered or does not appear to be related or relevant to the assistance requested, write "NA" for "not applicable." Prepare your application in accordance with the standard instructions which coincide with the forms, as well as the OCS specific instructions set forth below.

1. SF-424—"Application for Federal Assistance"

Item #1—For purposes of this announcement, all projects are considered "Applications;" there are no "Pre-applications." Also, all projects are considered non-construction. Check the appropriate box under "Application."

Item #5 and #6—The legal name of the applicant must correspond to the name associated with the Employer Identification Number.

Item #7—If applicant is a "nonprofit organization," enter "N" in the box and specify "nonprofit organization" in the space marked "Other." Proof of nonprofit status must be included with the application.

Item #8—All applications are "New."
 Item #9—Enter "DHHS, Office of Community Services."

Item #10—The Catalog of Federal Domestic Assistance Number for projects covered under this Announcement is 13.793.

2. SF-424A—"Budget Information—Non-Construction Programs"

See instructions accompanying this form. In completing these sections, the "Federal Funds" budget entries will relate to the requesting OCS funds only, and "Non-Federal" will include leveraged funds from other sources.

3. SF-424B—"Assurances-Non-Construction"

All applicants must sign and return the "Assurances" with their application.

4. Project Narrative

The narrative section of the application must address the priority areas described in Part B and follow the format outlined below.

a. *Analysis of Need.* The application should identify the management and/or programmatic problem areas in which State recipients of CSBG and/or local service providers are seeking assistance.

b. *Work Program.* The application must contain a detailed and specific work program that is both sound and feasible. Applicants must address how the proposed project will carry out the legislative mandate and the program activities found in Part B. This section of the narrative must include:

(1) Project priorities and rationale for selecting them, (2) goals and objectives, and (3) project activities. Quantitative data must be provided. For projects funded under priority one, applicants must describe how they will identify needs, the activities that they propose to carry out to address those needs, the methods by which they will carry out those activities, and the plan for disseminating T&TA products resulting

from the project. Project activities must be described in a quantitative manner, i.e. number of training days, number of workshops, number of persons to be trained, number of local services providers to be impacted, materials to be developed, etc. The application must also include a plan for conducting an assessment of its activities as they relate to the goals and objectives.

For projects funded under priority two, applicants should, at a minimum, describe the methodology to be used to identify the kind of data to be collected, how the data will be collected, how the applicant will assure that the appropriate data will be collected, a plan for data analysis, the methods by which the data will be disseminated and the audiences, and a plan for conducting an assessment of the useful data collected.

Also to be included for both types of projects is a discussion on how the applicant will involve other appropriate organizations in the planning or implementation of the project in order to avoid duplication of effort and to leverage additional resources.

Each applicant also must indicate how the project will have a significant and beneficial impact. At a minimum the applicant must provide (1) a description of how the project will result in long-term program and management improvement in the CSBG program, and (2) a description of the impact area of the project.

c. *Program Experience.* Organizations must detail their competence in the specific program area. Documentation must be provided which addresses accomplishments relevant to the proposed project.

Organizations addressing priority one must detail their competence in the specific program priority area and as a deliverer with expertise in the fields of training and technical assistance. If applicable, information provided by these applicants must also address related achievements and competence of each cooperating or sponsoring organization.

d. *Staffing and resources.* The application must fully describe (e.g., a resume) the experience and skills of the proposed project director showing that the individual is not only well qualified but that his/her professional capabilities can assure successful implementation of the project. Identify the Chief Executive Officer, and the proposed project director. The applicant must provide proof of its ability to leverage additional resources prior to the release of grant funds.

Part C—Post Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Notice of Grant Award which provides the amount of Federal funds approved for use in the project, the budget period for which support is provided, the terms and conditions of the award, and the total project period for which support is contemplated.

General Conditions and Special Conditions (where the latter are warranted) which will be applicable to grants, are subject to the provisions of 45 CFR parts 74 and 92.

Grantees will be required to submit quarterly progress and financial reports (SF-269) as well as a final progress and financial report.

Grantees are subject to the audit requirements in 45 CFR parts 74 and 92.

Section 1352 of Public Law 101-121, signed into law on October 23, 1989, imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement, or loan. In addition, for each award action in excess of \$100,000 (or \$150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that

they have neither used nor will use any appropriated funds for payment to lobbyists; (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients or their subtier contractors or subgrantees will pay with profits or nonappropriated funds on or after December 22, 1989, and (3) to file quarterly up-dates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for noncompliance. See Attachment F for certification and disclosure forms to be submitted with the applications for this program.

Attachment H indicates the regulations which apply to all applicants/grantees under this program.

Dated: June 11, 1990.

Eunice S. Thomas,

Director, Office of Community Services.

Attachment A—SF-424, "Application for Federal Assistance"

APPLICATION FOR
FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction		2. DATE SUBMITTED		Applicant Identifier	
Preapplication <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction		3. DATE RECEIVED BY STATE		State Application Identifier	
		4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier	
5. APPLICANT INFORMATION					
Legal Name:			Organizational Unit:		
Address (give city, county, state, and zip code):			Name and telephone number of the person to be contacted on matters involving this application (give area code):		
6. EMPLOYER IDENTIFICATION NUMBER (EIN): [] [] - [] [] [] [] [] [] [] []			7. TYPE OF APPLICANT: (enter appropriate letter in box) <input type="checkbox"/>		
8. TYPE OF APPLICATION: <input type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision If Revision, enter appropriate letter(s) in box(es): <input type="checkbox"/> <input type="checkbox"/> A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify):			A. State H. Independent School Dist. B. County I. State Controlled Institution of Higher Learning C. Municipal J. Private University D. Township K. Indian Tribe E. Interstate L. Individual F. Intermunicipal M. Profit Organization G. Special District N. Other (Specify):		
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: [] [] [] [] [] [] [] [] [] []			9. NAME OF FEDERAL AGENCY:		
11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:					
12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):					
13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:			
Start Date	Ending Date	a. Applicant		b. Project	
15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?			
a. Federal	\$.00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:			
b. Applicant	\$.00	DATE _____			
c. State	\$.00	b. NO <input type="checkbox"/> PROGRAM IS NOT COVERED BY E.O. 12372			
d. Local	\$.00	<input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW			
e. Other	\$.00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?			
f. Program Income	\$.00	<input type="checkbox"/> Yes If "Yes," attach an explanation. <input type="checkbox"/> No			
g. TOTAL	\$.00				
18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED					
a. Typed Name of Authorized Representative		b. Title		c. Telephone number	
d. Signature of Authorized Representative				e. Date Signed	

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Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

- | Item: | Entry: | Item: | Entry: |
|-------|--|-------|--|
| 1. | Self-explanatory. | 12. | List only the largest political entities affected (e.g., State, counties, cities). |
| 2. | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable). | 13. | Self-explanatory. |
| 3. | State use only (if applicable). | 14. | List the applicant's Congressional District and any District(s) affected by the program or project. |
| 4. | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. | 15. | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 5. | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application. | 16. | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. | 17. | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. |
| 7. | Enter the appropriate letter in the space provided. | 18. | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) |
| 8. | Check appropriate box and enter appropriate letter(s) in the space(s) provided:
— "New" means a new assistance award.
— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
— "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. | | |
| 9. | Name of Federal agency from which assistance is being requested with this application. | | |
| 10. | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested. | | |
| 11. | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. | | |

Attachment B—SF-424A, "Budget Information Non-Construction"

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A — BUDGET SUMMARY						
Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. TOTALS		\$	\$	\$	\$	\$
SECTION B — BUDGET CATEGORIES						
Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY					Total (5)
	(1)	(2)	(3)	(4)	(5)	
a. Personnel	\$	\$	\$	\$	\$	\$
b. Fringe Benefits						
c. Travel						
d. Equipment						
e. Supplies						
f. Contractual						
g. Construction						
h. Other						
i. Total Direct Charges (sum of 6a - 6h)						
j. Indirect Charges						
k. TOTALS (sum of 6i and 6j)	\$	\$	\$	\$	\$	\$
7. Program Income	\$	\$	\$	\$	\$	\$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	\$	\$	\$	\$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	\$	\$	\$	\$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	\$	\$	\$	\$	\$
14. Non-Federal					
15. TOTAL (sum of lines 13 and 14)	\$	\$	\$	\$	\$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(e) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	\$	\$	\$	\$
17.				
18.				
19.				
20. TOTALS (sum of lines 16-19)	\$	\$	\$	\$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For *new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For *continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For *supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j — Show the amount of indirect cost.

Line 6k — Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A (continued)

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 - Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

Attachment C—SF-424B, "Assurances—Non-Construction Programs"

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

Attachment D—U.S. Department of Health and Human Services Certificate Regarding Drug-Free Workplace Requirements for Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR part 76, subpart F. The regulations, published in the January 31, 1989 *Federal Register*, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the U.S. Department of Health and Human Services determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of the grant, or governmentwide suspension or debarment.

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Make it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under

subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee shall insert in the space provided below, the site(s) for the performance of work done in connection with the specific grant (Street address, city, county, State, Zip Code):

Attachment E—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicated or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation for this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions." Provided below without modifications in all lower tier covered transactions and in all solicitations for lower tier covered actions.

Attachment F—Certification Regarding Anti-Lobbying Provisions

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the

undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative

agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person

who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature _____
Organization _____
Title _____
Date _____

BILLING CODE 4150-04-M

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

Approved by OMB
0348-0046

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. Initial filing <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known: _____	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known: _____	
6. Federal Department/Agency: _____	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known: _____	9. Award Amount, if known: \$ _____	
10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI): _____	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI): _____	
(attach Continuation Sheet(s) SF-LLL-A, if necessary)		
11. Amount of Payment (check all that apply): \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	13. Type of Payment (check all that apply): <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____	
12. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: _____ _____ _____		
(attach Continuation Sheet(s) SF-LLL-A, if necessary)		
15. Continuation Sheet(s) SF-LLL-A attached: <input type="checkbox"/> Yes <input type="checkbox"/> No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

**DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET**Approved by OMB
0348-0046

Reporting Entity: _____

Page _____ of _____

Attachment G—State Single Points of Contact*Alabama*

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic & Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125-0347, Telephone (205) 284-8905

Arizona

Ms. Janice Dunn, Arizona State Clearinghouse, 1700 West Washington Avenue, Fourth Floor, Phoenix, Arizona 85007, Telephone (602) 542-5004

Arkansas

Mr. Joseph Gillespie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371-1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323-7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866-2156

Connecticut

Under Secretary, Attn: Intergovernmental Review Coordinator Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106-4459, Telephone (203) 566-3410

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736-3326

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue NW., Washington, D.C. 20004, Telephone (202) 727-9111

Florida

George H. Meier, Director of Intergovernmental Coordination, Director, Florida State Clearinghouse,

Executive Office of the Governor, Office of Planning and Budgeting, Growth Management and Planning Policy Unit, The Capitol, Tallahassee, Florida 32399-0001, Telephone (904) 488-8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street SW., Atlanta, Georgia 30334, Telephone (404) 656-3855

Hawaii

Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol, Honolulu, Hawaii 96813, Telephone (808) 548-3016 or 548-3085

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782-8639

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232-5610

Iowa

Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281-3725

Kentucky

Robert Lenoard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564-2382

Louisiana

Robin Hote, Division of Administration, Office of State Clearinghouse, P.O. Box 94095, Baton Rouge, Louisiana 70804-9095, Telephone (504) 342-7006

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289-3261

Maryland

Mary Abrams, Director, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365, Telephone (301) 225-4490

Massachusetts

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, Room 904, Boston, Massachusetts 02202, Telephone (617) 727-3253

Michigan

Michelyn Pasteur, Deputy Director, Local Development Services, Department of Commerce, P.O. Box 30225, Lansing, Michigan 48903, Telephone (517) 375-1838

Please direct correspondence to: Manager, Federal Project Review System, 6500 Mercantile Way, Suite 2, Lansing Michigan 48911, Telephone (517) 334-6190

Mississippi

Cathy Mallette, Governor's Office of Federal State Programs, Department of Planning and Policy, 421 West Pascagoula Street, Jackson, Mississippi 39206, Telephone (601) 960-4282

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751-4834

Montana

Deborah Davis, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Lieutenant Governor, Capitol Station, Room 210—State Capitol, Helena, Montana 59620, Telephone (406) 444-5522

Nevada

Jean Ford, Nevada Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 885-4420

Please direct correspondence and questions to: John Walker, Clearinghouse Coordinator

New Hampshire

Robert W. Varney, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271-2155

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-6613

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-8025

New Mexico

Dean Olson, Director, Management & Program Analysis Division, Department of Finance & Administration, Room 424, State Capitol Building, Santa Fe, New Mexico 87503, Telephone (505) 827-3885

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474-1605

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733-0499

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224-2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266-0411, Telephone (614) 466-0698

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, P.O. Box 26980, Oklahoma City, Oklahoma 73126, Telephone (405) 843-9770

Oregon

Attn: Delores Streeter, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street NE., Salem, Oregon 97310, Telephone (503) 373-1998

Pennsylvania

Laine A. Heltebride, Special Assistant, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Telephone (717) 783-3700

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277-2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734-0435

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773-3212

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741-1676

Texas

Thomas C. Adams, Office of Budget and Planning, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463-1778

Utah

Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Telephone (801) 533-5245

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828-3326

Washington

Catherine Townley, Coordinator, Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Olympia, Washington 98504-4151, Telephone (206) 753-4978

West Virginia

Fred Cutlip, Director, Community Development Division, Governor's

Office of Community and Industrial Development, Building 18, Room 553, Charleston, West Virginia 25305, Telephone (304) 348-4010

Wisconsin

James R. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, P.O. Box 7864, Madison, Wisconsin 53707-7864, Telephone (608) 266-1741

—Please direct correspondence and questions to: Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777-7574

Territories**Guam**

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agaña, Guam 96910, Telephone (671) 472-2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940-9985, Telephone (809) 727-4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774-0750

Attachment H—DHHS Regulations Applicable to All Applicants Grantees

The following DHHS regulations apply to all applicants/grantees under the Training and Technical Assistance Program.

Title 145 of the Code of Federal Regulations:

- Part 16—Procedures of the Department Grant Appeals Board
- Part 74—Administration of Grants (non-governmental)
- Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):
 - Sections 74.62(a) Non-Federal Audits

- 74.173 Hospitals
- 74.174(b) Other Nonprofit Organizations
- 74.304 Final Decisions in Disputes
- 74.710 Real Property, Equipment and Supplies
- 74.715 General Program Income
- Part 75—Informal Grant Appeal Procedures
- Part 76—Debarment and Suspension from Eligibility for Financial Assistance
- Subpart F—Drug Free Workplace Requirements
- Part 80—Non-discrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964
- Part 81—Practice and Procedures for Hearing Under Part 80 of this Title
- Part 83—Nondiscrimination on the basis of sex in the admission of individuals to training programs
- Part 84—Non-discrimination on the Basis of Handicap in Programs

- Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance
- Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (Federal Register, March 11, 1988)
- Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

Attachment I—Checklist for Use in Submitting OCS Grant Applications (Optional)

The application should contain:

1. A completed, signed SF-424, "Application for Federal Assistance".
2. A completed "Budget Information-Non-Construction" (SF-424A);
3. A signed "Assurances-Non-Construction" (SF-424A);
4. A Project Narrative beginning with a Table of Contents that describes the project in the following order:
 - (a) Analysis of Need

- (b) Work Program
- (c) Program Experience
- (d) Staffing and Resources
- (e) Appendices Including By-Laws, Articles of Incorporation, Resumes, etc.

5. A signed copy of Certification Regarding the Anti-Lobbying Provision;
6. A complete Disclosures of Lobbying Activities form, if appropriate;
7. A self-addressed mailing label which can be affixed to a postcard to acknowledge receipt of application.

The application should not exceed a total of 30 pages. It should include one original and four identical copies, printed on white 8 1/2 by 11 inch paper, and be presented in a ring binder.

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments D and E.

[FR Doc. 90-13893 Filed 6-14-90; 8:45 am]

BILLING CODE 4150-04-M

Registered Federal Paper

Friday
June 15, 1990

Part VII

Office of Management and Budget

Cumulative Report on Rescissions and
Deferrals; Notice

**OFFICE OF MANAGEMENT AND
BUDGET****Cumulative Report on Rescissions and
Deferrals**

June 1, 1990

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status, as of June 1, 1990, of 28 deferrals and three rescission proposals contained in five special messages for FY 1990. These messages were transmitted to Congress on October 2, 1989, January 29, 1990, February 6, 1990, April 18, 1990, and April 23, 1990.

Rescissions (Table A and Attachment A)

As of June 1, 1990, three rescission proposals totalling \$226.9 million were pending before Congress.

Deferrals (Table B and Attachment B)

As of June 1, 1990, \$4,537.7 million in budget authority was being deferred from obligation. Attachment B shows

the history and status of each deferral reported during FY 1990.

Information from Special Messages

The special messages containing information on deferrals and rescissions that are covered by this cumulative report are printed in the **Federal Register** as cited below:

54 FR 41410, Friday, October 6, 1989
55 FR 3860, Monday, February 5, 1990
55 FR 5388, Wednesday, February 14, 1990
55 FR 17364, Tuesday, April 24, 1990
55 FR 18276, Tuesday, May 1, 1990

Richard G. Darman,
Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF FY 1990 RESCISSIONS

	Amounts (In millions of dollars)
Rescissions proposed by the President.....	226.9
Accepted by the Congress.....	0
Rejected by the Congress.....	0
Pending before the Congress.....	226.9

TABLE B

STATUS OF FY 1990 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President.....	10,662.6
Routine Executive releases through June 1, 1990....	-6,124.9
Overtured by the Congress.....	0
Currently before the Congress.....	4,537.7

Attachments

Attachments

TABLE A

STATUS OF FY 1990 RESCISSIONS

	Amounts (In millions of dollars)
Rescissions proposed by the President.....	226.9
Accepted by the Congress.....	0
Rejected by the Congress.....	0
Pending before the Congress.....	226.9

TABLE B

STATUS OF FY 1990 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President.....	10,662.6
Routine Executive releases through June 1, 1990....	-6,124.9
Overtured by the Congress.....	0
Currently before the Congress.....	4,537.7

ATTACHMENT A
Status of FY 1990 Rescissions
 (Amounts in thousands of dollars)

As of June 1, 1990 Agency/Bureau/Account	Rescission Number	Amount		Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
		Previously Considered by Congress	Currently before Congress					
DEPARTMENT OF AGRICULTURE								
Agricultural Research Service Buildings and facilities.....	R90-1		4,075	04-23-90				
Cooperative State Research Service Buildings and facilities.....	R90-2		41,008	04-23-90				
DEPARTMENT OF COMMERCE								
Economic Development Administration Economic development assistance program.....	R90-3		181,800	04-23-90				
TOTAL, RESCISSIONS PROPOSED.....			226,883					

ATTACHMENT B
Status of FY 1990 Deferrals - As of June 1, 1990
 (Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted		Date of Message	Releases(-)		Congress- sional Action	Cumulative Adjust- ments (+)	Amount Deferred as of 6-1-90
		Original Request	Subsequent Change (+)		Cumulative OMB/ Agency	Congres- sionally Required			
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance Economic support fund.....	D90-1	271,000		10-02-89					
	D90-1A		1,798,079	01-29-90					
	D90-1B		19,831	04-18-90	919,141				1,169,768
Foreign military financing.....	D90-8	4,156,842		01-29-90	2,581,026				1,575,616
International military education and training.....	D90-9	23,293		01-29-90	23,293				0
DEPARTMENT OF AGRICULTURE									
Forest Service Expenses, brush disposal.....	D90-2	188,680		10-02-89	52,726				135,954
Cooperative work.....	D90-3	410,189		10-02-89					
	D90-3A		367,148	01-29-90	322,896				454,441
DEPARTMENT OF DEFENSE - MILITARY									
Aircraft Procurement, Army.....	D90-10	16,000		02-06-90	16,000				0
Procurement of Ammunition, Army...	D90-11	310,000		02-06-90	310,000				0
Procurement of Ammunition, Army...	D90-12	90,000		02-06-90	90,000				0
Other Procurement, Army.....	D90-13	11,000		02-06-90	11,000				0
Aircraft Procurement, Navy.....	D90-14	200,000		02-06-90	200,000				0
Weapons Procurement, Navy.....	D90-15	13,900		02-06-90	13,900				0

ATTACHMENT B
Status of FY 1990 Deferrals - As of June 1, 1990
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted		Date of Message	Releases(-)			Cumulative Adjust- ments (+)	Amount Deferred as of 6-1-90
		Original Request	Subsequent Change (+)		Cumulative OMB/ Agency	Congres- sionally Required	Congres- sional Action		
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration Limitation on administrative expenses (construction).....									
	D90-5	7,078		10-02-89					
	D90-5A		49	04-18-90					7,127
DEPARTMENT OF STATE									
Bureau for Refugee Programs United States emergency refugee and migration assistance fund, executive....									
	D90-6	44		10-02-89					
	D90-6A		49,785	01-29-90	31,950				17,879
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration Facilities and equipment (Airport and airway trust fund).....									
	D90-7	502,361		10-02-89					
	D90-7A		673,064	01-29-90					1,175,425
TOTAL, DEFERRALS.....		7,754,185	2,908,405		6,124,882	0		0	4,537,708

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ATTACHMENT B
Status of FY 1990 Deferrals - As of June 1, 1990
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted		Date of Message	Releases(-)			Cumulative Adjustments (+)	Amount Deferred as of 6-1-90
		Original Request	Subsequent Change (+)		Cumulative OMB/ Agency	Congress- sionally Required	Congres- sional Action		
Shipbuilding and Conversion, Navy..	D90-16	592,398		02-06-90	592,398				0
Shipbuilding and Conversion, Navy..	D90-17	324,800		02-06-90	324,800				0
Aircraft Procurement, Air Force.....	D90-18	181,700		02-06-90	181,700				0
Missile Procurement, Air Force.....	D90-19	131,000		02-06-90	131,000				0
Other Procurement, Air Force.....	D90-20	70,000		02-06-90	70,000				0
National Guard and Reserve									
Equipment, Defense.....	D90-21	40,900		02-06-90	40,900				0
Research, Development, Test and Evaluation, Air Force.....	D90-22	100,000		02-06-90	100,000				0
Research, Development, Test and Evaluation, Defense Agencies.....	D90-23	21,000		02-06-90	21,000				0
Military Construction, Army.....	D90-24	3,200		02-06-90	3,200				0
Military Construction, Army.....	D90-25	16,150		02-06-90	16,150				0
Military Construction, Army National Guard.....	D90-26	18,301		02-06-90	18,301				0
Military Construction, Air National Guard.....	D90-27	36,841		02-06-90	36,841				0
Military Construction, Army Reserve...	D90-28	16,660		02-06-90	16,660				0
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense.....	D90-4	1,047		10-02-89					
	D90-4A		450	04-18-90					1,497

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[FR Doc. 90-13997 Filed 6-14-90; 8:45 am]

BILLING CODE 3110-01-C

Test Report

Friday
June 15, 1990

Part VIII

Department of Labor

Mine Safety and Health Administration

30 CFR Part 77

**Inspections of Refuse Piles and Waste
Impoundment Dams at Surface Coal
Mines and Surface Work Areas of
Underground Coal Mines; Proposed Rule**

Department of Labor

Mine Safety and Health Administration

30 CFR Part 77

RIN: 1219-AA49

Inspections of Refuse Piles and Waste Impoundment Dams at Surface Coal Mines and Surface Work Areas of Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise safety standards that address refuse piles and impoundment structures used at coal mines to dispose of refuse or contain water, sediment or slurry. Proposed revisions would address certifications for hazardous refuse piles, frequency of inspections and the method of abandonment for impoundments and impounding structures. The proposal would affect surface coal mines and surface areas of underground coal mines.

The proposed rule would reduce the information collection burden imposed by the Mine Safety and Health Administration (MSHA) on mine operators or other affected parties by revising reporting and recordkeeping requirements.

DATES: Written comments must be submitted on or before September 21, 1990.

ADDRESSES: Send written comments to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION:**I. Paperwork Reduction Act**

The proposed rule contains information collection requirements regarding safety standards that address refuse piles and impoundment structures. These paperwork requirements have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980. The respondents in each of the paperwork provisions would be mine operators. Each of the following public burden hour estimates includes the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection information. In

each instance, the resultant information collection would be used by MSHA to assess compliance with the proposed requirements. The information collection requirements contained in the proposal are discussed below.

Refuse piles; reporting requirements; certification (§ 77.215-2/§ 77.215-3)

Under the existing rule, a certification by a registered engineer that the refuse pile has been modified to minimize the possibility of failure is required every twelfth month once a refuse pile has been declared a hazard. At present, there are 50 refuse piles that have been declared hazardous on which MSHA receives a report each year. MSHA estimates that by the mine operator not having to report to MSHA after the hazardous condition has been abated, the agency would receive 25 fewer reports each year, thus reducing the number of reports received by MSHA by 50 percent. MSHA estimates that it takes the mine operator 2 hours to prepare an average report. The burden for this proposed section is estimated to be 50 hours.

Water, sediment, or slurry, impoundments and impounding structures; inspection requirements; correction of hazards; program requirements. (§ 77.216-3)

The proposal would revise paragraph (a) of § 77.216-3 to allow for alternative inspection frequencies other than the 7 days currently required. Alternative timeframes, approved by the District Manager, would be based on the hazard potential as well as on a demonstrated history of performance. Under the alternative timeframes, MSHA estimates inspections would average one every 3 weeks (17 inspections per year). The Agency further estimates that it takes 2 hours to inspect impoundments without monitoring instruments and 3 hours to inspect impoundments with monitoring instruments. There are approximately 450 impoundments without monitoring instruments and 300 with monitoring instruments. The total burden for this proposed section is estimated to be 30,600 hours.

Water, sediment, or slurry impoundments and impounding structures; reporting requirements; certification (§ 77.216-4)

The proposed rule would revise § 77.216-4 to require only a certification where an impoundment or impounding structure has not undergone any changes in the previous year. Reports would continue to be required where the examination has revealed changes to the structure. MSHA estimates that of

the 750 impounding structures, 300 will have undergone changes in the previous year, and a report would be required. MSHA further estimates that it takes 2 hours to prepare an average report. The burden for this proposed section is estimated to be 600 hours.

The public reporting burden for these three proposed sections is estimated to be 31,250 hours annually. Send comments regarding these burden estimates or any other aspects of these paperwork requirements, including suggestions for reducing this burden, to Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, 4015 Wilson Boulevard, BT #3, room 631, Arlington, Virginia 22203 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503, Attention: Desk Officer for MSHA.

II. Background and Discussion of Proposed Rule

The Mine Safety and Health Administration (MSHA) is proposing to revise its existing safety standards for surface coal mines and surface areas of underground coal mines. The standards affected address refuse piles and impoundment structures.

Impoundments are structures that are used to impound water, sediment or slurry, or any combination of these materials, and refuse piles are deposits of coal mine waste that are excavated during mining operations and separated from mined coal and deposited on the surface. The failure of these structures can flood and devastate downstream communities. To avoid or minimize such disasters, standards exist for the construction and maintenance of such structures.

For reasons addressed in the section-by-section discussion, MSHA believes that the proposed revisions will not reduce the protection afforded miners by the existing standards. The proposed revisions clarify existing paperwork requirements or contemplate new procedures for inspection and abandonment of impoundments or refuse piles. These revisions will provide at least the same measure of safety as the existing standards.

III. Section-by-Section Discussion*Section 77.215-2 Refuse piles; reporting requirements*

The proposal would revise paragraph (c) of § 77.215-2. It would clarify that reporting information on refuse piles to MSHA's District Manager every twelfth month once a refuse pile has been

declared a hazard would be necessary only as long as the refuse pile presents a hazard. The existing standard does not provide a mechanism to terminate the annual reporting requirements after the hazard has been eliminated unless the site is abandoned according to an approved plan, a process that could take many years.

Section 77.215-3 Refuse piles; certification

The proposal would revise paragraph (a) of § 77.215-3 to allow operators to certify that a refuse pile that has been identified as hazardous is being constructed in accordance with current prudent engineering practices. Under the existing standard, there is no recognition of the possibility that elimination of a hazard could take more than 180 days. The proposed standard would recognize that in some cases it may take more than 180 days to eliminate the hazard in a refuse pile.

Paragraph (b) would be revised to clarify that the requirement to provide a certification every twelfth month once a refuse pile has been declared a hazard would be necessary only as long as the refuse pile presents a hazard. The existing standard does not provide a mechanism to terminate the reporting requirements after the hazard has been eliminated unless the site is abandoned through an approved plan, a process that could take many years.

Section 77.216-3 Water, sediment, or slurry impoundments and impounding structures; inspection requirements; correction of hazards; program requirements

The proposal would revise paragraph (a) of § 77.216-3 to allow for alternative inspection frequencies other than the 7 days currently required. This revision would allow flexibility to reduce the frequency of inspections and minimize recordkeeping requirements for impoundments that have a demonstrated record of safety or are not hazardous. Unless an alternative inspection frequency is approved by the District Manager, the required inspection period for impounding structures would be every 7 days.

MSHA anticipates that the reasons for extending the time between inspections would include a low hazard potential for the structure, as well as a demonstrated history of performance. The potential for extension of inspection time periods would encourage operators to install instrumentation with the knowledge that once the structure has a demonstrated record of safe performance, less frequent inspections and instrument readings may be possible. This approach

would also reduce unnecessary inspections and reduce the need for miners to travel in remote areas when it has been demonstrated that the structure has little or no potential for hazard.

Section 77.216-4 Water, sediment, or slurry impoundments and impounding structures; reporting requirements; certification

The proposal would revise § 77.216-4 to clarify the reporting requirements for operators who have experienced changes in the impoundment and impounding structure during the past 12 months. Records would be required where the examination has revealed indications of structural weakness, hazardous conditions, or other changes to the structure. An annual certification would be required where the structure has not undergone any changes during the previous year. This would reduce the reporting requirements for operators who have not encountered changes in the impoundment during the reporting period. The proposal would continue to provide for accountability and uniformity in recordkeeping and yield a comparison for identification of potentially unsafe situations.

Section 77.216-5 Water, sediment or slurry impoundments and impounding structures; abandonment

The proposal would revise § 77.216-5 to allow an operator to obtain MSHA's approval of an abandonment plan for an impoundment which does not contain a provision to preclude the future impoundment of water. Under the proposals, the abandonment plan would continue to require District Manager approval. In addition the proposal would allow flexibility for MSHA to approve an abandonment plan without provisions to preclude the future impoundment of water. This flexibility would be allowed only when certain requirements are met. These proposed requirements would include certification by a registered engineer that the structure conforms to the design drawings and has no apparent defects; certification from the owner of willingness and ability to assume the responsibility to maintain the structure; and a requirement that the owner obtain a permit or approval for the structure from the appropriate state regulatory authority.

Under the existing rule, in order to abandon an impoundment the operator is required to completely eliminate the possibility of future impoundment of water. This standard eliminates several functional and recreational future uses for impoundment structures. Such uses

could include flood control, farming, or maintenance of recreational lakes or ponds for purposes such as fishing, boating, or swimming.

Further, since 1975, when the current standards were promulgated, other agencies have also become involved in the regulation of impoundment structures associated with mining. The Surface Mining Control and Reclamation Act established the Office of Surface Mining (OSM) which has promulgated extensive surface regulations that include the control of fish water, waste, and sediment structures. The OSM regulations also reference MSHA standards for impoundments at 30 CFR 77.216 through 77.216-3.

The implementation of the Office of Surface Mining regulations, especially on impoundments (30 CFR 816.49), permits the operator to have a permanent impoundment. These permanent impoundment requirements are a part of OSM's "Post-Mining Land Use Plan." As part of this plan, the operator's permit is based on the following:

1. The impoundment is adequate for its intended purpose;
2. Final grading will provide adequate safety; and
3. The spillway will be designed as the regulatory authority may require.

The proposal includes a provision which would require a prospective owner to obtain a permit from the state regulatory authority. Under the safeguards provided for in the proposal, the Agency believes that the flexibility to allow for post-mining uses of impoundment structures is warranted, would not reduce safety, and would have a beneficial societal impact.

IV. Executive Order 12291 and the Regulatory Flexibility Act

This proposed rule would not result in major cost increases nor have an incremental effect of \$100 million or more on the industry. As this is not a major rule, Executive Order 12291 does not require a Regulatory Impact Analysis to be prepared. MSHA estimates that compliance with this proposed rule would result in a cost savings to coal mine operators of \$1,919,139.50.

The proposed rule makes minor modifications to the existing rule which would reduce the burden by 63,950 hours, from 174,700 hours to 110,750 hours. Specifically, the revision to §§ 77.215-2 and 77.215-3, which provides a mechanism to terminate the annual reporting requirement after the hazard has been eliminated, would decrease the total number of reports to

be completed from 50 to 25, reducing the burden from 100 to 50 hours and resulting in a cost savings of \$1,500.50. It is estimated that the proposed revision to § 77.216-3, which allows flexibility to reduce the frequency of inspections (thereby, the recordkeeping requirements) for impoundments that have a demonstrated record of safety, would decrease the total burden from 93,600 to 30,600 hours and result in a cost savings of \$1,890,830. Finally, the revision to § 77.216-4, which requires a report only when there are indications of structural changes or hazardous conditions, would decrease the total number of reports to be completed from 750 to 300, reducing the burden from 1,500 to 600 hours and resulting in a cost savings of \$27,009.

The hourly compensation rate for both coal mine operators and qualified persons who would be responsible for the recordkeeping and reporting requirements is estimated to be \$30.01. This compensation rate is based on MSHA's determination that, on average, the compensation rate for coal mine operators or qualified persons is 1.30 times greater than the compensation rate for miners. The compensation rate for miners was determined by using the average hourly earnings for coal miners as reported by the Bureau of Labor Statistics' *Employment and Earnings*, February 1990, and then increasing this wage to include fringe benefits, as estimated by Western Mine Engineering's *Mining Cost Service*, 1987.

The Regulatory Flexibility Act requires agencies which are developing regulatory proposals to evaluate and include, whenever possible, compliance alternatives that minimize the adverse impact on small businesses. MSHA determined that this proposal will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

List of Subjects in 30 CFR Part 77

Mine safety and health,
Impoundments and impounding
structures.

Dated: June 11, 1990.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

Accordingly, under 30 U.S.C. 811, part 77, subchapter O, chapter I, title 30 of the Code of Federal Regulations is proposed to be amended as follows:

PART 77—MANDATORY SAFETY STANDARDS—SURFACE COAL MINES AND SURFACE WORK AREAS OF UNDERGROUND COAL MINES

1. The authority citation to 30 CFR part 77 is revised to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

2. Sections 77.215-2(c) and 77.215-3 (a) and (b) are revised to read as follows:

§ 77.215-2 Refuse piles; reporting requirements.

(c) The information required by paragraphs (b)(4) through (b)(8) of this section shall be reported every twelfth month from the date of original submission for those refuse piles which the District Manager has determined can present a hazard until the District Manager notifies the operator that the hazard has been eliminated.

§ 77.215-3 Refuse piles; certification.

(a) Within 180 days following written notification by the District Manager that a refuse pile can present a hazard, the person owning, operating, or controlling the refuse pile shall submit to the District Manager a certification by a registered engineer that the refuse pile is being constructed or has been modified in accordance with current, prudent engineering practices to minimize the probability of impounding water and failure of such magnitude as to endanger the lives of miners.

(b) After the initial certification required by this section, until the District Manager notifies the operator that the hazard has been eliminated, certification shall be submitted every twelfth month from the date of the initial certification.

3. Section 77.216-3(a) is revised to read as follows:

§ 77.216-3 Water, sediment, or slurry impoundments and impounding structures; inspection requirements; correction of hazards; program requirements.

(a) All water, sediment, or slurry impoundments that meet the requirements of § 77.216(a) shall be examined as follows:

(1) At intervals not exceeding 7 days, or as otherwise approved by the District Manager, for appearances of structural weakness and other hazardous conditions.

(2) All instruments shall be monitored at intervals not exceeding 7 days, or as otherwise approved by the District Manager.

(3) Longer inspection or monitoring intervals approved under this paragraph

shall be justified by the operator based on the hazard potential and performance of the impounding structure.

(4) All inspections required by this paragraph shall be performed by a qualified person designated by the person owning, operating, or controlling the impounding structure.

4. Section 77.216-4 is revised to read as follows:

§ 77.216-4 Water, sediment, or slurry impoundments and impounding structures; reporting requirements; certification.

(a) Except as provided in paragraph (b) of this section, every twelfth month following the date of the initial plan approval, the person owning, operating or controlling a water, sediment, or slurry impoundment and impounding structure that has not been abandoned in accordance with an approved plan shall submit to the District Manager a report containing the following information:

(1) Changes in the geometry of the impounding structure for the reporting period.

(2) Location and type of installed instruments and the maximum and minimum recorded readings of each instrument for the reporting period.

(3) The minimum, maximum, and present depth and elevation of the impounded water, sediment, or slurry for the reporting period.

(4) Storage capacity of the impoundment structure.

(5) The volume of water, sediment, or slurry impounded at the end of the reporting period.

(6) Any other change which may have affected the stability or operation of the impounding structure that has occurred during the reporting period.

(7) A certification by a registered professional engineer that all construction, operation and maintenance was in accordance with the approved plan.

(b) A report is not required when the operator certifies to the District Manager that there have been no changes under paragraph (a) of this section to the impoundment or impounding structure.

5. Section 77.216-5 is revised to read as follows:

§ 77.216-5 Water, sediment, or slurry impoundments and impounding structures; abandonment.

(a) Prior to abandonment of any water, sediment, or slurry impoundment and impounding structure which meets the requirements of § 77.216(a), the person owning, operating, or controlling

such an impoundment and impounding structure shall submit to, and obtain approval of, the District Manager a plan for abandonment based on current, prudent engineering practices which shall provide for major slope stability, and include a schedule for the plan's implementation, and, except as provided in paragraph (b) of this section, contain provisions to preclude the probability of future impoundment of water, sediment, or slurry.

(b) An abandonment plan does not have to contain a provision to preclude the future impoundment of water if the plan is approved by the District Manager and documentation is included in the abandonment plan to ensure that each of the following requirements is met:

(1) A registered professional engineer, familiar with the structure's design and construction, shall certify that the structure substantially conforms to the

approved design plan and specifications and that there are no apparent defects.

(2) The owner shall certify a willingness and ability to assume responsibility for maintenance of the structure.

(3) A permit or approval for the continued existence of the impoundment or impounding structure shall be obtained from the State agency responsible for dam safety.

[FR Doc. 90-13935 Filed 6-14-90; 8:45 am]

BILLING CODE 4510-43-M

Test Report

Friday
June 15, 1990

Part IX

Environmental Protection Agency

40 CFR Part 136

Guidelines Establishing Test Procedures
for the Analysis of Pollutants; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL-3751-9]

RIN 2040-AB58

Guidelines Establishing Test Procedures for the Analysis of Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule amends the Guidelines Establishing Test Procedures for the Analysis of Pollutants under section 304(h) of the Clean Water Act as proposed on September 3, 1987. This amendment approves an additional analytical technique to measure the concentrations of twenty-three inorganic chemicals. The precision and bias of this technique, the direct current plasma (DCP) atomic emission spectrometric method, is not substantially different than the techniques already approved. Approved analytical techniques are required for determining compliance with effluent limitations, guidelines and standards and in pretreatment standards set forth at 40 CFR parts 402 through 699 (unless otherwise specially noted or defined in those parts.)

DATES: In accordance with 40 CFR 23.2 (45 FR 26048), these amendments to the regulation shall be considered issued for purposes of judicial review at 1 p.m. eastern time, June 29, 1990.

Under section 509(b)(1) of the Clean Water Act, judicial review of these amendments can be obtained only by filing a petition for review in the United States Court of Appeals within 120 days after they are considered issued for purposes of judicial review. Under 509(b)(2) of the Clean Water Act, the requirements of these amendments may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

This rule shall be effective on July 16, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Lichtenberg, Environmental Monitoring Systems Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268. Telephone number: (513) 569-7306.

SUPPLEMENTARY INFORMATION

I. Authority

This regulation comes under authority of sections 304(h) and 501(a) of the Clean Water Act, 33 U.S.C. 1251 et seq. (the Federal Water Pollution Control Act

Amendments of 1972 as amended by the Clean Water Act of 1977) (the "Act"). Section 304(h) of the Act requires the Administrator of the EPA to "promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit application pursuant to section 402 of this Act." Section 501(a) of the Act authorizes the Administrator to "prescribe such regulations as are necessary to carry out his functions under this Act."

II. Regulatory Background

EPA promulgated "Guidelines Establishing Test Procedures for the Analysis of Pollutants" in 40 CFR part 136 on October 16, 1973 (38 FR 28758). These guidelines, which were amended on December 1, 1976 (41 FR 52780), provided test procedures for 115 well known pollutants and pollutant parameters, including metals and a number of organic compounds.

On October 26, 1984 the EPA promulgated regulations in the *Federal Register* (49 FR 43234) which further amended part 136. These amendments approved gas chromatographic (GC), gas chromatographic/mass spectrometric (GC/MS), and high performance/liquid chromatographic (HPLC) methods for the analysis of the 111 toxic organic "priority" pollutants, an analytical method for carbonaceous bio-chemical oxygen demand (CBOD), a method for metals by inductively coupled plasma spectrophotometry (ICP), and mandatory sample container, preservation and holding time requirements. The test procedures for the organic pollutants included provisions for performance criteria that analysts must meet. These provisions were promulgated as interim final rulemaking. A correction notice was published on January 4, 1985 (50 FR 690-697). EPA also published technical amendments in those regulations in the *Federal Register* of June 30, 1986 (51 FR 23692).

The Virginia Electric Power Company (VEPCO) and others challenged the October, 1984 regulations (*Virginia Electric Power Co., et al. v. U.S. Environmental Protection Agency, et al.*, No. 84-2227 (4th Cir. filed Nov. 9, 1984)). EPA and the parties entered into a settlement agreement on the issues in this case. In the settlement, EPA agreed to propose a change to the procedures for approving new, alternate test methods for nation-wide use to allow an opportunity for notice and comment prior to final approval. On September 3, 1987 (52 FR 33551) EPA proposed to

change the procedures under § 136.5. A final rule on this proposal will be published at a later date.

The settlement also required EPA to provide notice and comment procedures for today's direct current plasma method. EPA sought comment on the DCP method in 52 FR 33542 (September 3, 1987) and is addressing these comments below.

III. The DCP Method

Beckman Instruments, Inc., in accordance with the guidelines published at 40 CFR section 136.5, applied for nationwide approval of the Applied Research Laboratories, method, "Direct Current Plasma—Atomic Emission Spectrometric Method for Trace Elemental Analysis of Water and Waste," for the analysis of the following metals:

Aluminum, Barium, Beryllium, Boron, Cadmium, Calcium, Chromium, Cobalt, Copper, Gold, Iron, Lead, Magnesium, Manganese, Molybdenum, Nickel, Palladium, Platinum, Silver, Sodium, Titanium, Vanadium, and Zinc.

This method describes a technique for the simultaneous multi-element or sequential determination of trace elements by DC argon plasma spectroscopy. The basis of the method is the measurement of atomic emission by an optical spectroscopic technique. Samples are nebulized and the aerosol is transported into a DC argon plasma where excitation of the analyte atoms occurs. When these excited atoms decay to a lower energy state, characteristic atomic line emission spectra are produced. The spectra are dispersed by an echelle grating spectrometer and the intensities of the lines are monitored by photomultiplier tubes. The photocurrents from the photomultiplier tubes are processed and controlled by a computer system.

A background correction technique may be required to compensate for variable background contribution to the determination of trace elements. Background must be measured adjacent to analyte lines on samples during analysis.

EPA's Environmental Monitoring Systems Laboratory in Cincinnati, Ohio (EMSL-CI) thoroughly reviewed and evaluated the supporting data submitted by the Applied Research Laboratories (Formerly, Beckman Instruments, Inc.). That information is on file at EMSL-CI, 26 West Martin Luther King Dr., Cincinnati, Ohio 45268. It is available for public inspection, to the extent consistent with 40 CFR part 2 (EPA's

"Public Information" regulations). The approved method description is available from (Applied Research Laboratories, 24911 Avenue Stanford, Valencia, California 91355.)

In addition to the Alternate Test Procedure study data, the Agency has examined DCP data from EPA interlaboratory Water Pollution Performance Evaluation (PE) studies and an ASTM interlaboratory study of the DCP Method D4190-88 as well as published EPA single-laboratory data (*Atomic Spectroscopy*, Vol. 3, No. 6, 1982). These studies indicate that precision attained by laboratories using the DCP method meet the requirements of the alternate test protocol with respect to the currently approved Atomic Absorption (AA) methods.

Based on EMSL-CI's review, and pursuant to 40 CFR 136.5, EPA hereby approves the Applied Research Laboratories DCP procedure as an acceptable test procedure for nationwide use. Specifically, the method carries sufficient precision and bias data to make it acceptable as a part 136 method and to show its comparability to other approved methods for analysis of metals. As an approved alternate test procedure, the Applied Research Laboratories DCP procedure is acceptable for use by any person required to use procedures approved under section 304(h) of the CWA.

IV. Public Participation and Response to Most Significant Comments

The Agency requested comments on the proposal to approve the DCP method as an acceptable method for twenty-three inorganic chemicals. A total of five commenters responded to this request. One commenter representing a group, provided extensive comments which embodied the significant comments of the other respondents.

Comment: The commenter believes that it is premature to accept the DCP method as a part of part 136 because necessary validation studies were not included and it is devoid of performance information that is necessary for future standard setting, permitting and enforcement proceedings.

Response: EPA does not agree that it is premature to accept the DCP method because the available performance information, described above, is sufficient to approve the method. Precision and bias statements are a part of the record in this rule making and will be incorporated in the DCP method as an appendix. Statements of precision and bias, however, have no regulatory effect beyond a determination that a method is comparable to an approved method. They are provided only to

afford the method users data on which they can judge their own performance and/or the efficacy of the method on their samples. Further, quality control requirements similar to those in the EPA "Inductively Coupled Plasma (ICP)—Atomic Emission Method-200.7" are incorporated into the DCP method to help assure acceptable results.

The commenter's position appears to be based on the assumption that interlaboratory validation studies must always be conducted prior to approval of an analytical technique. While such studies are generally beneficial, EPA has repeatedly approved the use of analytical techniques without interlaboratory studies having been performed on them. This was the case for many of the inorganic chemical methods approved under section 304(h) of the Clean Water Act as well as the methods for trihalomethanes, methods for volatile organic chemicals and the furnace atomic absorption methods for metals under the Safe Drinking Water Act. While EPA recognizes that an interlaboratory study is useful for validating a method, the Agency does not consider it a requirement. Further, the costs to the Agency of conducting such studies for every analytical method or modification of existing methods would be prohibitive. As discussed above, EPA believes there is sufficient information to validate this method.

EPA is approving the DCP method under an established nationwide alternative test procedure (ATP) program that has been in use since 1979. EPA has determined that the data submitted by Applied Research Laboratories meet the criteria prescribed by the ATP Program (EPA, EMSL-CI File N82-0008) and, thus, judges the DCP method to be comparable to other approved methods for the stated analytes.

Although interlaboratory testing could be used for method comparability, comparability studies are usually done in a single laboratory. The statistical procedures applied to ATP data collected for the DCP method to determine comparability to an approved AA method included the following:

- (1) The data were tested for normality by the Chi Square test and for homogeneity of variance by the Cochran test.
- (2) A standard t-test was used to test for differences between methods when the assumptions of item (1) were satisfied.
- (3) A Wilcoxon signed rank test was used to test for differences between methods when the assumptions of item (1) were not satisfied.

(4) An F-test was used to test for differences in precision between the methods.

Comment: The comparability data obtained by the manufacturer in support of nationwide approval of the DCP method do not appear to allow for the computation of multiple laboratory precision and accuracy statements, the determination of MDLs, or a quantitative basis for deciding if the method performs better for some matrices than others.

Response: The commenter is correct. The ATP comparability data collected for the DCP method does not nor was it intended to allow for the computation or determination of any of the stated performance parameters. Although it has been EPA policy that the majority of the ATP data be collected by a laboratory independent of the applicant's own organization, it has never been the Agency's practice or intent to conduct interlaboratory studies in support of nationwide approval requests. The goal of collecting ATP data is simply to evaluate the comparability of the approved method and the proposed method when applied to the analyses of the same relevant wastewaters.

Under the ATP, data are collected on samples from 5 of the most appropriate SIC Categories. These samples are expected to contain a range of matrix backgrounds that could be found in compliance monitoring. Therefore, the samples are considered to be appropriate for comparability testing. The ATP procedure does not usually require spiking; however, when the analytes of interest are undetectable, the samples are spiked at reasonable concentrations within the range of the method. While the Agency agrees that it is generally desirable to conduct the study over a range of analyte concentrations, the Agency is satisfied that the single concentration (low level) used in this study, when considered along with the EPA PE study data and the ASTM study data, adequately indicates that the proposed DCP method is comparable to the currently approved methods and is, therefore, acceptable for use under section 304(h).

The purpose of the ATP comparability study is not to provide data for the calculation of MDLs. However, whenever possible MDL estimates obtained using the procedure in appendix B of part 136, are published in EPA analytical methods as a guide to the analyst. Since MDLs vary somewhat from one laboratory to another, laboratory-specific MDLs must also be documented by laboratories using the

method. When MDLs are not available, detection limits (DLs) based on other criteria, such as instrument signal to noise ratios are provided. Table 1 of the DCP method contains a list of DLs for each of the 23 applicable metals.

Comment: EPA should incorporate by reference the precision, bias, and limit of detection data.

Response: Statements of precision, bias, or limit of detection have no regulatory significance in this rulemaking other than to assess the validity of a method for purposes of part 136. Moreover, the use of analytic variability data in effluent limitations or enforcement action is not at issue in this rulemaking. While EPA does not necessarily intend to print precision, bias, or limit of detection data in 40 CFR part 136, such data is available in EPA internal or published reports.

Comment: One commenter, representing a second group, supported the use of the DCP method for two reasons:

- (1) Because they wish to encourage flexibility in the selection of analytical methods under the permits system; and
- (2) They use the method on their matrices and it works.

Response: EPA agrees with the commenter.

Comment: One commenter noted that the U.S. Geological Survey methods for lead, nickel, chromium and aluminum were omitted from Table 1B and should be inserted and that the proper citation

for the methods was "85" (1985) and not "84" (1984).

Response: The U.S. Geological Survey methods for lead, nickel, chromium, and aluminum were not included in Table 1B because they have not been approved by EPA. EPA concurs that the proper citation is "85" (1985) for those methods that are approved.

V. Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, requires a regulatory impact analysis. EPA has determined that this regulation is not major as it will not result in an effect on the economy of \$100 million or more, a significant increase in cost or prices, or any of the adverse effects described in the Executive Order. This rule simply specifies an analytical technique which may be used by laboratories to measure concentrations of certain metals and, therefore, has no adverse economic impacts. However, this action was submitted to OMB for their review under the Executive Order.

B. Regulatory Flexibility Act

This amendment is consistent with the objectives of the Regulatory Flexibility Act (5 U.S.C. 602 et seq.) because it will not have a significant economic impact on a substantial number of small entities. The method included in this final rule gives all laboratories the flexibility to use this alternate method.

C. Paperwork Reduction Act

This rule contains no requests for information and is, therefore, exempt from the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 136

Water pollution control.

Dated: June 7, 1990.

William K. Reilly,

Administrator.

In consideration of the preceding, EPA amends part 136 of title 40 of the Code of Federal Regulations as follows:

1. The authority citation for 40 CFR part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Public Law 95-217, 91 Stat. 1588, et seq. (33 U.S.C. 1251 et seq.) (The Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

2. Section 136.3 is amended by revising the following entries in Table 1B of paragraph (a): 3, Aluminum; 7, Barium; 8, Beryllium; 10, Boron; 12, Cadmium; 13, Calcium; 19, Chromium; 20, Cobalt; 22, Copper; 26, Gold; 30, Iron; 32, Lead; 33, Magnesium; 34, Manganese; 36, Molybdenum; 37, Nickel; 47, Palladium; 51, Platinum; 62, Silver; 63, Sodium; 72, Titanium; 74, Vanadium, and 75, Zinc; and by revising footnote 33 to read as follows:

§ 136.3 Identification of test procedures.

.....

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter, units and method	Reference (method number or page)				
	EPA 1979	Std. methods, 16th Ed.	ASTM	USGS ¹	Other
3. Aluminum—Total, ³ mg/L; Digestion ² followed by:					
AA direct aspiration.....	202.1	303C.....		I-3051-85.....	
AA furnace.....	202.2	304.....			200.7. ⁴ Note 33.
Inductively coupled plasma (ICP).....					
Direct current plasma (DCP) or.....					
Colorimetric (Eriochrome cyanine R).....		306B.....			
7. Barium—Total, ³ mg/L; Digestion ² followed by:					
AA direct aspiration.....	208.1	303C.....		I-3084-85.....	
AA furnace.....	208.2	304.....			200.7. ⁴ Note 33.
ICP, or.....					
DCP.....					
8. Beryllium—Total, ³ mg/L; Digestion ² followed by:					
AA direct aspiration.....	210.1	303C.....	D3645-84(A).....	I-3095-85.....	
AA furnace.....	210.2	304.....			200.7. ⁴ Note 33.
ICP.....					
DCP, or.....					
Colorimetric (aluminon).....		309B.....			
10. Boron—Total, mg/L; Colorimetric (curcumin).....	212.3	404A.....		I-3112-85.....	200.7. ⁴
ICP, or.....					

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	EPA 1979	Reference (method number or page)			
		Std. methods, 16th Ed.	ASTM	USGS ¹	Other
DCP.....					Note 33.
12. Cadmium—Total, ^a mg/L; Digestion ^a followed by:					
AA direct aspiration.....	213.1	303 A or B	D3557-84 (A or B).....	I-3135-85 or I-3136-85.	33.089. ^a p. 37. ^a
AA furnace.....	213.2	304			200.7. ^a
ICP.....					Note 33.
DCP.....					
Voltametry, ¹⁰ or.....			D3557-84(C)		
Colorimetric (Dithizone).....		310B			
13. Calcium—Total, ^a mg/L; Digestion ^a followed by:					
AA direct aspiration.....	215.1	303A	D511-84(B).....	I-3152-85	200.7. ^a
ICP.....					Note 33.
DCP, or.....					
Titrimetric (EDTA).....	215.2	311C	D511-84(A)		
19. Chromium—Total, ^a mg/L; Digestion ^a followed by:					
AA direct aspiration.....	218.1	303A	D1687-84(D).....	I-3236-85	33.089. ^a
AA chelation-extraction.....	218.3	303B			
AA furnace.....	218.2	304			200.7. ^a
ICP.....					Note 33.
DCP, or.....					
Colorimetric (Diphenylcarbazide).....		312B	D1687-84(A)		
20. Cobalt—Total, ^a mg/L; Digestion ^a followed by:					
AA direct aspiration.....	219.1	303 A or B	D3558-84 (A or B).....	I-3239-85 or I-3240-85b.	p. 37. ^a
AA furnace.....	219.2	304			200.7. ^a
ICP, or.....					Note 33.
DCP.....					
22. Copper—Total, ^a mg/L; Digestion ^a followed by:					
AA direct aspiration.....	220.1	303 A or B	D1688-84 (D or E).....	I-3270-85 or I-3271-85.	33.089. ^a p. 37. ^a
AA furnace.....	220.2	304			200.7. ^a
ICP.....					Note 33.
DCP, or.....					
Colorimetric (Neocuproine), or (Bicinchoninate).....		313B	D1688-84(A)		Note 18.
26. Gold—Total, ^a mg/L; Digestion ^a followed by:					
AA direct aspiration.....	231.2	303A			
AA furnace, or.....	231.2	304			
DCP.....					Note 33.
30. Iron—Total, ^a mg/L; Digestion ^a followed by:					
AA direct aspiration.....	236.1	303 A or B	D1068-84 (C or D).....	I-3381-85	33.089. ^a
AA furnace.....	236.2	304			200.7. ^a
ICP.....					Note 33.
DCP, or.....					
Colorimetric (Phenanthroline).....		315B	D1068-84(A)		Note 21.
32. Lead—Total, ^a mg/L; Digestion ^a followed by:					
AA direct aspiration.....	239.1	303 A or B	D3559-84 (A or B).....	I-3399-85	33.089. ^a
AA furnace.....	239.2	304			200.7. ^a
ICP.....					Note 33.
DCP.....					
Voltametry, ¹⁰ or.....			D3559-85(C)		
Colorimetric (Dithizone).....		316B			
33. Magnesium—Total, ^a mg/L; Digestion ^a followed by:					
AA direct aspiration.....	242.1	303A	D511-84(B).....	I-3447-85	33.089. ^a
ICP.....					200.7. ^a
DCP, or.....					Note 33.
Gravimetric.....		318B	D511-77(A)		
34. Manganese—Total, ^a mg/L; Digestion ^a followed by:					
AA direct aspiration.....	243.1	304 A or B	D858-84 (B or C).....	I-3454-85	33.089. ^a
AA furnace.....	243.2	304			

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	EPA 1979	Reference (method number or page)			
		Std. methods, 16th Ed.	ASTM	USGS ¹	Other
ICP.....					200.7. ⁴
DCP, or.....					Note 33.
Colorimetric (Persulfate) or.....	319B		D858-84(A)		33.126. ³
(Periodate).....					Note 22.
36. Molybdenum—Total, ² mg/L;					
Digestion ³ followed by:					
AA direct aspiration.....	246.1	303C		I-3490-85.....	
AA furnace.....	246.2	304			200.7. ⁴
ICP, or.....					Note 33.
DCP.....					
37. Nickel—Total, ² mg/L;					
Digestion ³ followed by:					
AA direct aspiration.....	249.1	303 A or B	D1886-84 (C or D).....	I-3499-85.....	
AA furnace.....	249.2	304			200.7. ⁴
ICP.....					Note 33.
DCP, or.....					
Colorimetric (Heptoxime).....		321B			
47. Palladium—Total, ² mg/L;					
Digestion ³ followed by:					
AA direct aspiration.....	253.1				p. S27. ⁹
AA furnace.....	253.2				p. S28. ⁹
DCP.....					Note 33.
51. Platinum—Total, ² mg/L;					
Digestion ³ followed by:					
AA direct aspiration.....	255.1	303A			
AA furnace.....	255.2	304			Note 33.
DCP.....					
62. Silver—Total, ^{2*} mg/L;					
Digestion ³ followed by:					
AA direct aspiration.....	272.1	303 A or B		I-3720-85.....	33.089. ² p. 37. ⁸
AA furnace.....	272.2	304			319B. ^{1*}
Colorimetric (Dithizone).....					200.7. ⁴
ICP, or.....					Note 33.
DCP.....					
63. Sodium—Total, ² mg/L;					
Digestion ³ followed by:					
AA direct aspiration.....	273.1	303A		I-3735-85.....	33.107. ²
ICP.....					200.7. ⁴
DCP, or.....					Note 33.
Flame photometric.....		325B	D1428-82(A)		
72. Titanium—Total, ² mg/L;					
Digestion ³ followed by:					
AA direct aspiration.....	283.1	303C			
AA furnace.....	283.2	304			Note 33.
DCP.....					
74. Vanadium—Total, ² mg/L;					
Digestion ³ followed by:					
AA direct aspiration.....	286.1	303C			
AA furnace.....	286.2	304			200.7. ⁴
ICP.....					Note 33.
DCP, or.....					
Colorimetric (Gallic acid).....		327B	D3373-84(A)		
75. Zinc—Total, ² mg/L;					
Digestion ³ followed by:					
AA direct aspiration.....	289.1	303 A or B	D1691-84 (C or D).....	I-3900-85.....	33.089. ² p. 37. ⁸
AA furnace.....	289.2	304			200.7. ⁴
ICP.....					Note 33.
DCP, or.....					
Colorimetric (Dithizone) or.....		328C			Note 32.
(Zincon).....					

¹ "Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments," U.S. Department of the Interior, U.S. Geological Survey, Open-File Report 85-495, 1986, unless otherwise stated.

² "Official Methods of Analysis of the Association Analytical Chemists," methods manual, 14th ed. (1985).

³ For the determination of total metals the sample is not filtered before processing. A digestion procedure is required to solubilize suspended material and to destroy possible organic-metal complexes. Two digestion procedures are given in "Methods for Chemical Analysis of Water and Wastes, 1979." One (section 4.1.3) is a vigorous digestion using nitric acid. A less vigorous digestion using nitric and hydrochloric acids (section 4.1.4) is preferred; however, the analyst should be cautioned that this mild digestion may not suffice for all sample types. Particularly, if a colorimetric procedure is to be employed, it is necessary to ensure that all

organo-metallic bonds be broken so that the metal is in a reactive state. In those situations, the vigorous digestion is to be preferred making certain that at no time does the sample go to dryness. Samples containing large amounts of organic materials would also benefit by this vigorous digestion. Use of the graphite furnace technique, inductively coupled plasma, as well as determinations for certain elements such as arsenic, the noble metals, mercury, selenium, and titanium require a modified digestion and in all cases the method write-up should be consulted for specific instruction and/or cautions.

NOTE: If the digestion included in one of the other approved references is different than the above, the EPA procedure must be used.

Dissolved metals are defined as those constituents which will pass through a 0.45 micron membrane filter. Following filtration of the sample, the referenced procedure for total metals must be followed. Sample digestion for dissolved metals may be omitted for AA (direct aspiration or graphite furnace) and ICP analyses provided the sample solution to be analyzed meets the following criteria:

- a. has a low COD (<20),
- b. is visibly transparent with a turbidity measurement of 1 NTU or less,
- c. is colorless with no perceptible odor, and
- d. is of one liquid phase and free of particulate or suspended matter following acidification.

⁴ The full text of Method 200.7, "Inductively-Coupled Plasma Atomic Emission Spectrometric Method for Trace Element Analysis of Water and Wastes," is given in Appendix C of this Part 136.

⁵ American National Standard on Photographic Processing, Effluents, Apr. 2, 1975. Available from ANSI, 1430 Broadway, New York, NY 10018.

⁶ "Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency." Supplement to the Fifteenth Edition of Standard Methods for the Examination of Water and Wastewater (1981).

¹⁰ The use of normal and differential pulse voltage ramps to increase sensitivity and resolution is acceptable.

¹⁶ The approved method is that cited in Standard Methods for the Examination of Water and Wastewater, 14th Edition, 1976.

¹⁸ Copper, Biocinchonate Method, Method 8506, Hach Handbook of Water Analysis, 1979, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

²¹ Iron, 1,10-Phenanthroline Method, Method 8008, 1980, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

²² Manganese, Periodate Oxidation Method, Method 8034, Hach Handbook of Wastewater Analysis, 1979, pages 2-113 and 2-117, Hach Chemical Company, Loveland, CO 80537.

²⁵ Approved methods for the analysis of silver in industrial wastewaters at concentrations of 1 mg/L and above are inadequate where silver exists as an inorganic halide. Silver halides such as the bromide and chloride are relatively insoluble in reagents such as nitric acid but are readily soluble in an aqueous buffer of sodium thiosulfate and sodium hydroxide to a pH of 12. Therefore, for levels of silver above 1 mg/L, 20 mL of sample should be diluted to 100 mL by adding 40 mL each of 2 M Na₂S₂O₃ and 2 M NaOH. Standards should be prepared in the same manner. For levels of silver below 1 mg/L the approved method is satisfactory.

²⁸ Zinc, Zincon Method, Method 8009, Hach Handbook of Water Analysis, 1979, pages 2-231 and 2-233, Hach Chemical Company, Loveland, CO 80537.

²⁹ "Direct Current Plasma (DCP) Optical Emission Spectrometric Method for Trace Elemental Analysis of Water and Wastes, Method AES0029." 1986, Applied Research Laboratories, Inc., 24911 Avenue Stanford, Valencia, CA 91355.

[FR Doc. 90-13934 Filed 6-14-90; 8:45 am]

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Testis Great Federal Report

Friday
June 15, 1990

Part X

Office of Management and Budget

Governmentwide Guidance for New
Restrictions on Lobbying; Notice

OFFICE OF MANAGEMENT AND BUDGET

Governmentwide Guidance for New Restrictions on Lobbying

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: This Notice provides further information about OMB's interim final guidance, published December 20, 1989, as called for by Section 319 of Public Law 101-121.

DATE: The effective date of the interim final guidance was December 23, 1989.

FOR FURTHER INFORMATION CONTACT: For grants and loans, contact Barbara F. Kahlow, Financial Management Division, OMB (telephone: 202-395-3053). For contracts, contact Richard C. Loeb, Office of Federal Procurement Policy, OMB (telephone: 202-395-3300).

SUPPLEMENTARY INFORMATION: On October 23, 1989, the President signed into law the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 ("the Act"). Section 319 of the Act amended title 31, United States Code, by adding a new Section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions." Section 1352 took effect with respect to Federal contracts, grants, loans, cooperative agreements, loan insurance commitments, and loan guarantee commitments that were entered into or made more than 60 days after the date of the enactment of the Act, i.e., December 23, 1989.

Section 1352 required the Director of the Office of Management and Budget (OMB) to issue governmentwide guidance for agency implementation of, and compliance with, the requirements of this section. Interim final guidance was issued on December 18, 1989 and published on December 20, 1989 (54 FR 52306).

This Notice is to inform the public about certain clarifications which OMB has made since the December 20, 1989 publication. These include replies to two letters addressed to OMB from Members of Congress. Both letters are reproduced herein as well as OMB's replies. In addition, OMB has issued an internal government memorandum which is reproduced herein.

Allan V. Burman,
Administrator for Federal Procurement Policy.

Susan Gaffney,
Acting Assistant Director for Financial Management.

Herein follows the text of the first letter and OMB's reply:

United States House of Representatives
Employment and Housing Subcommittee of the Committee on Government Operations
May 9, 1990.

Richard Darman,
Director, Office of Management and Budget,
10300 New Executive Office Building,
Washington, D.C. 20503.

Dear Mr. Darman: As the House sponsor of the The Clean Consultants Act of 1989, for which you are now writing regulations, I would like to encourage you to consider and include clarification in the implementation of this law to state that it does not preclude legitimate functions of local governments which includes contact with Federal agencies.

A priority in the case of cities and counties is the ability to contact Federal agencies for information concerning grants. At present, Federal agencies are not responding because there is either confusion on the part of Federal employees concerning how to deal with direct contact from local governments and their representatives, or there is a policy of no response to requests for information or clarification from local government representatives because of an extremely strict definition of what the new law does and does not allow. OMB should direct all Federal agencies to continue past practices of providing information to local governments and their representatives until final regulations make clear and uniform the appropriate parameters for contacts among local officials, their representatives and Federal employees. I cannot stress enough how important it is for local government to receive timely and accurate information on Federal programs. Providing information is clearly not within the realm of 'influence peddling' or lobbying to which the new law addresses itself.

In relation to drafting of regulations, I urge you to consider comments to clarify potential problems which surfaced in the NPRM. Among my concerns and the concerns of local government are:

1. The unnecessary inclusion of entitlement programs in reporting requirements. Entitlement programs do not fall under the category of programs which could be 'brokered' in the manner of discretionary grant programs. The Clean Consultants Act as its focus, the process of obtaining discretionary grants by the use of undue influence. Entitlements do not go through the same kind of process and therefore I do not understand why recipients would need to follow disclosure regulations as applicants and recipients of discretionary monies would need to follow.

2. Grants management is, for all practical

purposes, a general duty job with most cities and counties. Whether that individual is a direct employee, or holds a long-term bona fide consultant contract, the duties involved in grants management often include the need to monitor the grants program from which the city or county benefits. Seeking information in this role, a grants manager would not appear to be using undue influence to obtain funding—rather, it seems an informed manager serves a function for the best use of funds from the perspective of the Federal government as well as the local government entity. Therefore, contacts with the Federal government by grants managers would seem to be an appropriate action and one not prohibited under the lobbying portions of the new law.

The intent of the law is to either disallow those receiving Federal funds from using employees on that grants to solicit other Federal monies, and to make public those individuals hired with non-Federal funds to obtain a Federal grant. The law makes a clear distinction which singles out the special arrangement or contract individual hired to secure specific program funding. Abuses in this area are the focus and the background of the law. A local government employee or a long-term Washington agent for a local government clearly does not fit into the same abusive pattern.

During the period regulations to make this distinction are being written, and safeguards are put in place to cut abuse, local governments should not be shackled by a loss of opportunity to use informed employees and other legitimate representatives in grants application and management when they seek information on grant opportunities. The current unresponsiveness of many Federal agencies, which appears to be a reaction in advance of final regulations, acts as a veil behind which grant-making agencies decline to provide any information to local officials or their representatives. This seems a needless impediment for appropriate actions by local governments competing for existing programs of Federal assistance.

3. In your writing of regulations, I trust you will define terms to clarify problems which present themselves in the NPRM in the context of current practice. Special project lobbyists and 'influence peddling' as exemplified in the HUD hearings conducted by the Employment and Housing Subcommittee of the House Government Operations Committee, which I chair, define themselves. Specifically, the \$300,000 phone calls to HUD and the contracting of well-connected Washington operatives for specific projects are the target of the new law. Day-to-day grants managers and long-term bona fide general interest consultants perform a service different from those abusive actions which have been uncovered during our HUD hearings. This distinction between individuals and actions should be made clear—which does not appear to be the case in the NPRM.

I appreciate your attention to my comments and hope that you will contact me or have your staff contact Lisa Phillips on my

Subcommittee staff (225-6751) if you have any questions. I am particularly interested in the issue of information availability and ask that your office contact me in the next ten days to advise on how Federal agencies are provided guidance on the new law while regulations are being finalized.

Sincerely,

Tom Lantos,
Chairman.

Executive Office of the President

Office of Management and Budget

May 21, 1990.

Honorable Tom Lantos,
Chairman, Employment and Housing
Subcommittee, Committee on
Government Operations, U.S. House of
Representatives, Washington, DC 20515.

Dear Chairman Lantos: This responds to your letter of May 9, 1990, concerning Section 319 of Public Law 101-121 and the Office of Management and Budget's (OMB's) interim final guidance entitled "Governmentwide Guidance for New Restrictions on Lobbying." Your letter raises concerns about "legitimate functions of local governments which include contact with Federal agencies."

First, your letter raises concerns about Federal agencies' responsiveness to requests from cities and counties for information or clarification about grants. Nothing in the statute or OMB's guidance limits Federal agencies from continuing to respond to such informational requests. However, as your letter indicates, there appears to be a need to better inform the agencies with respect to this aspect of OMB's guidance. Therefore, we will be raising this issue with the agencies during the interagency common rulemaking process which is proceeding with work on the final version of the OMB guidance. We want to insure that the guidance does not inappropriately impose a chilling effect on communications between Federal agencies and their grantees. As agencies become more familiar with this new law and OMB's guidance, questions about responding to these types of requests should be eliminated.

Several commenters included in the docket of public comments on OMB's interim final guidance, as well as your letter, raise concerns about the appropriateness of requiring disclosure of routine and ongoing post-award administration of grants. After consideration of these concerns, we intend to indicate in OMB's final guidance that such activities fall within the exemption for "Professional and Technical Services."

Also, your letter raises concerns about the applicability of the law, as well as OMB's guidance, to entitlement programs. Neither the statute nor OMB's guidance exempts any particular grant programs. We believe that coverage of mandatory awards, including the entitlement programs (e.g., grants for State administration of Medicaid) and formula grants, is appropriate, since subawards under these grant programs are discretionary. For example, contractors are competitively selected by State grantees for electronic data processing of Medicaid claims.

Lastly, your letter raises concerns about ways to clarify or more specifically target OMB's guidance to better capture the types of

activities which this new law was intended to curb. We are carefully considering ways to improve this aspect of OMB's guidance along the lines that you raised, as well as in response to the public comments that we have received.

We have every intention of achieving reasonable implementation of this law, within the context of the statutory framework provided by Congress. I hope this letter fully meets the concerns raised in your letter. If you have additional questions, please do not hesitate to call me.

Sincerely,

Frank Hodsoll,

Executive Associate Director.

Herein follows the text of the second letter and OMB's reply:

United States House of Representatives

May 10, 1990.

Mr. Richard Darman,
Director, Office of Management and Budget,
Old Executive Office Bldg., Washington,
D.C. 20503.

Dear Mr. Darman: When Congress passed the appropriations bill for the Department of the Interior, the intent of Section 319 was to prohibit the use of federally appropriated funds to lobby Congress or federal agencies in connection with federal grants, contracts, loans, or cooperative agreements.

However, I fear that the interim final rule unnecessarily affects state agency communications with Congress and federal agencies in the course of administering ongoing programs. These communications are appropriate, they foster more efficient and effective program implementation and benefit all levels of government.

I ask that you consider re-examining section 319 in light of these concerns. Thank you for your attention.

Sincerely,

Timothy J. Penny,
Member of Congress.

Executive Office of the President

Office of Management and Budget

June 8, 1990.

Honorable Timothy J. Penny,
U.S. House of Representatives,
Washington, DC 20515.

Dear Congressman Penny: This responds to your letter of May 10, 1990, concerning Section 319 of Public Law 101-121 and the Office of Management and Budget's (OMB's) "Governmentwide Guidance for New Restrictions on Lobbying." Your letter raises concerns about "State agency communications with Congress and Federal agencies in the course of administering ongoing programs."

We are sensitive to the concerns you raised and those raised by State and local officials and their interest groups. We are attempting to address all of these concerns in finalizing OMB's guidance.

Several commenters on OMB's interim final guidance pointed out the inequity of requiring disclosure by a grantee or a contractor's newly-hired employees who are expected to become employed over 130 days, including

newly-elected State officials. After consideration of these concerns, we expect that OMB's final guidance will expand the regulatory definition of "regularly employed" so as to no longer require disclosure by such persons.

In addition, several commenters, as well as your letter raised concerns about the appropriateness of requiring disclosure of routine and ongoing post-award activities to administer grants and contracts. These activities are not influencing activities. After consideration of these concerns, we intend to indicate in OMB's final guidance that such activities fall within the exemption for "Professional and Technical Services."

We have every intention of achieving reasonable implementation of this law, within the context of the statutory framework provided by Congress. I hope this letter fully meets the concerns raised in your letter. If you have any questions, please do not hesitate to call me.

Sincerely,

Frank Hodsoll,

Executive Associate Director.

Herein follows the text of OMB's clarification memorandum to the agencies: June 12, 1990.

Memorandum for Assistant Secretaries for Management and Agency Senior Procurement Executives

From:

Allan V. Burman, Administrator for Federal Procurement Policy
Susan Gaffney, Acting Assistant Director for Financial Management
Subject: Clarification Regarding "Governmentwide Guidance for New Restrictions on Lobbying"

On December 20, 1989, the Office of Management and Budget's (OMB's) interim final "Governmentwide Guidance for New Restrictions on Lobbying" was published in the Federal Register. The effective date of the guidance was December 23, 1989. Included in the guidance at Appendix A are the "Certification Regarding Lobbying" and the "Statement for Loan Guarantees and Loan Insurance." This memorandum provides clarifications concerning the guidance and the "Certification" and "Statement." Please alert your headquarters and field staffs to them.

First, the Certification and the Statement are intended to apply only to the instant Federal transaction for which a Certification or Statement is being obtained: the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into of a cooperative agreement, or the making of a Federal commitment for a loan guarantee or loan insurance.

Second, the final version of the Certification and Statement will reference OMB's guidance, including Subparts B and C, which specify certain "Agency and Legislative Liaison" and "Professional and Technical Services" activities which are allowable with appropriated funds and for which no disclosure is necessary.

Third, only bids, offers, applications and awards, submitted or made on or after the

December 23, 1989 effective date of the restrictions need to contain certifications or statements and disclosures, if required, i.e., awards and commitments made before December 23, 1989, but modified, amended, extended, continued or renewed after that date do not need certifications or statements unless they are modified or amended beyond the scope of the award. An existing Federal grant, loan, or cooperative agreement with such a modification or amendment needs to contain a certification and disclosure form, if required. A bilateral modification to an existing Federal contract which requires justification and approval pursuant to Federal Acquisition Regulation (FAR) section 6.303, citing the authorities in FAR section 6.302, and which exceeds the \$100,000 threshold needs a certification and disclosure form, if required.

Fourth, only Federal transactions over the \$100,000 (contracts, grants, cooperative agreements) or \$150,000 (loans, loan guarantees, loan insurance) thresholds need certifications or statements and disclosures, if required.

Fifth, contracts subject to the FAR are covered by the January 30, 1990 FAR interim final rule (Federal Acquisition Circular 84-55), not the February 26, 1990 common rule. The February 26, 1990 rule applies only to contracts not subject to the FAR (generally nonprocurement contracts) as well as to grants, loans, cooperative agreements, loan guarantee commitments, and loan insurance commitments.

Sixth, nothing contained in Subpart C of the guidance, Activities by Other Than Own Employees, applies to selling activities by independent sales representatives before an agency provided that the selling activities are prior to formal solicitation by an agency. Such selling activities are:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

Note that the activities in (1) and (2) above are specifically limited to the merits of the matter. An independent sales representative who engages in selling activities described above, prior to the issuance of a formal solicitation by an agency, is not deemed to be engaged in influencing with regard to a particular contract and will not need to disclose such activities.

Seventh, under subsections ____205(b) and ____300(c), the examples cited are not intended, in any way, to be all inclusive, to limit the application of the "Professional and technical services" exemption provided in the law, or to limit the exemption to licensed professionals. "Professional and technical services" shall be advise and analysis directly applying any professional or technical expertise. Note that the "Professional and technical services"

exemption is specifically limited to the merits of the matter.

Lastly, the following clarify OMB's interim final guidance:

(1) To the extent a person can demonstrate that the person has sufficient monies, other than Federal appropriated funds, the Federal Government shall assume that these other monies were spent for any influencing activities unallowable with Federal appropriated funds. This assumption applies equally to persons who do and do not submit to the Federal Government cost or pricing data. Where no cost or pricing data are submitted, the Federal Government shall assume that monies spent are a reduction from profits otherwise available.

(2) Profits and fees earned under Federal contracts (see FAR subpart 15.9) are not considered appropriated funds. Profits, and fees that constitute profits, earned under Federal grants, loans, and cooperative agreements are not considered appropriated funds.

(3) Nothing in OMB's interim final guidance requires a person to make any changes to that person's existing accounting systems.

(4) The prohibition on use of Federal appropriated funds does not apply to influencing activities not in connection with a specific covered Federal action. These activities include those related to legislation and regulations for a program versus a specific covered Federal action.

[FR Doc. 90-13999 Filed 6-14-90; 8:45 am]

BILLING CODE 3110-01-M

Test Report

Friday
June 15, 1990

Part XI

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 820

**Medical Devices; Current Good
Manufacturing Practice (CGMP)
Regulations; Revisions Being Considered;
Request for Information and Comments;
Proposed Rule**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 820

[Docket No. 90N-0172]

Medical Devices; Current Good Manufacturing Practice (CGMP) Regulations; Revisions Being Considered; Request for Information and Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is considering whether the agency should propose to revise the current good manufacturing practice (CGMP) regulations for medical devices at 21 CFR part 820. The decision on whether to propose to revise the device CGMP regulations will be based on the information and comments submitted in response to this notice, the recommendations of the agency's Device Good Manufacturing Practice Advisory Committee, analysis of FDA's device recall data, and the agency's experience in applying the device CGMP in its regulation of device manufacturers. The agency's decision will also be affected by the development of "harmonized" CGMP regulations by the European Community (EC).

DATES: Submit written information and comments by September 13, 1990.

ADDRESSES: Submit written information and comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 4-62, 5600 Fishers Lane, Rockville, MD 20857. Submit written requests for single copies of this notice or single copies of references 1 and 2 cited in this notice to the Division of Small Manufacturers Assistance (HFZ-220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6597 (toll-free outside of MD, 800-638-2041). Copies of references 3, 4, and 5 may be purchased from the American National Standards Institute, Inc. (ANSI), 1430 Broadway, New York, NY 10018.

FOR FURTHER INFORMATION CONTACT: William F. Hooten, Center for Devices and Radiological Health (HFZ-330), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1131.

SUPPLEMENTARY INFORMATION:

I. Current Status of the CGMP Regulations

As authorized by section 520(f) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(f)), FDA promulgated the CGMP regulations on July 21, 1978 (43 FR 31508) prescribing GMP requirements for the methods used in, and the controls and facilities used for the manufacture, packing, storage, and installation of medical devices. The CGMP regulations for devices became effective on December 18, 1978. The regulations are codified at title 21 of the Code of Federal Regulations, part 820 (21 CFR part 820). Except for editorial amendments updating the names of organizational units referenced in the regulations and revision of the guideline list of critical devices that was included in the preamble, the CGMP regulations for devices have not been revised since their promulgation. Devices that are not manufactured in compliance with the CGMP regulations are deemed to be adulterated under section 501(h) of the act (21 U.S.C. 351(h)).

II. Changes Being Considered Based on FDA Analysis of Recalls

On a periodic basis, FDA analyzes its recall data to identify the causes of problems (quality problems) that adversely affect device quality and lead to recalls. FDA has found two major groups of quality problems.

First, for device recalls that occurred from October 1983 through September 1989, FDA has found that approximately 44 percent of the quality problems that led to recall actions were attributable to defects in the design of devices. Such defects involved errors or deficiencies that were designed into the particular devices, including: The failure to properly establish and/or meet physical and performance requirements before production, the incompatibility of components with other components and the environment, the selection of inadequate packaging materials, and the failure to validate software prior to routine production. In addition, many devices were adversely affected during production because of the failure to properly design manufacturing processes.

Second, FDA found that a primary cause of recalls during 1983-1989 was the failure of firms to establish and implement adequate production and process controls, as required by the devices CGMP regulations, including: component controls (nonconforming components); change controls (inadequate qualification of changes made during production); and label controls (labeling mixups and mistakes).

Approximately 47 percent of the quality problems that caused 1983-1989 recalls were attributable to improper control of production-related activities. FDA is now developing a strategy designed to reduce GMP-related problems which result in GMP-related recalls.

The remainder of the problems that resulted in device recalls during 1983-1989 (about 9 percent) could not be ascribed to preproduction or production deficiencies. They involved noncompliance with standards promulgated under the Radiation Control for Health and Safety Act of 1968 (RCHSA) and noncompliance with premarket approval and other requirements of the act and regulations enforced by FDA.

FDA's assessment of the causes of recalls for the period of October 1983 through September 1989, are included in a report entitled, "Device Recalls: A Study of Quality Problems" (Ref. 1). Copies of the report may be obtained from the Division of Small Manufacturers Assistance (DSMA) (address above). (See 55 FR 21108; May 22, 1990, where FDA announced the availability of the report).

Because deficiencies in the design of devices are a continuing major cause of recalls, FDA intends to consider whether design control should be more explicitly and more pervasively integrated into the device CGMP regulations. FDA has previously made available two documents: "Preproduction Quality Assurance Planning: Recommendations for Medical Device Manufacturers," and "Guideline on General Principles of Process Validation." In these documents which may be obtained from DSMA (address above), FDA provided guidance to device manufacturers that sets forth preproduction design and process validation practices which are acceptable to FDA, but which are not mandatory legal requirements. The agency believes that this guidance should continue to be used. However, because the intrinsic quality of devices, including their safety and effectiveness, is established during the preproduction phase, and because voluntary compliance with agency guidance cannot be relied upon to provide the necessary assurance of safety and effectiveness, for the foregoing reasons, FDA is considering a proposal to add general requirements for design control to the device CGMP regulation.

III. Changes Being Considered Based on FDA Experience

As a result of 11 years of experience in applying the CGMP regulations to the

medical device industry, FDA has identified a number of existing GMP requirements which may require modification and/or expansion in order to properly reflect the original intent of the requirements and to allow FDA to properly determine compliance with the intent of the requirements. Additions and changes being considered include changes in the areas involving the identification of quality problems, corrective action, followup to complaints, qualification of specification changes, process validation, written procedures for complaints, trend analysis, failure analysis procedures, service controls, distribution records, and, agency authority to review and copy certain existing records. Additional specifics are contained in a report of a review of the device CGMP regulations conducted by a GMP Work Group within the Center for Devices and Radiological Health (CDRH) dated October 23, 1989 (Ref. 2). The report may be obtained from DSMA (address above).

IV. Changes Being Considered Based on Comparison of FDA's Device CGMP's to EC's Harmonized CGMP Regulations

The U.S., through the FDA, has been a leader in establishing GMP requirements for the manufacture of medical devices. Other countries have modeled their GMP's after FDA's. However, unless FDA updates its device CGMP regulations to assure their equivalency to international standards for quality that have gained widespread voluntary acceptance, the U.S. may have GMP requirements that are inconsistent with the requirements of other countries for the manufacture of devices.

Three international quality standards that are widely recognized and that will figure prominently in the marketing of medical devices in EC countries once harmonization is achieved are: "ISO 9001—Quality systems—Model for quality assurance in design/development, production, installation and servicing" (Ref. 3); "ISO 9002—Quality systems—Model for quality assurance in production and installation" (Ref. 4); and "ISO 9003—Quality systems—Model for quality assurance in final inspection and test" (Ref. 5).

FDA's present device CGMP regulations are comparable to the ISO 9002 international standard for quality systems. ISO 9003 is a subset of ISO 9002. However, U.S. manufacturers who meet FDA's GMP quality assurance requirements for devices, as presently constructed and interpreted, will not meet the ISO 9001 provisions for quality systems because there are significant

differences between the two quality programs. The major difference is that the ISO 9001 quality standard provides for design control.

FDA is considering proposing to update the device CGMP regulations to conform with the international quality standard, ISO 9001. In addition to the lack of design controls, other changes necessary to make FDA's CGMP regulations equivalent to the ISO 9001 standard consist primarily of the addition of requirements for the control of device servicing (where applicable), for the assessment of suppliers, and for controls to assure the adequacy of contracts between suppliers, contractors, and finished device manufacturers. Such changes in the device CGMP regulations will assure that serviced devices meet specifications and will improve assurance of the acceptability of components and contracted services.

If FDA's CGMP regulations are changed as described above, devices made by manufacturers in the U.S. would be in compliance with the harmonized GMP requirements developed by the EC that are based on the ISO 9001 standard for quality systems. Such compliance would make it easier for U.S. manufacturers to export their devices to countries in the EC.

By 1992, the EC intends to harmonize all marketing requirements for products and services marketed in the 12 EC countries to assure free trade among these countries. Such action will effectively create a huge common market of over 320 million people. Medical devices are one of the product categories whose marketing requirements will be harmonized.

Harmonization will be accomplished through the issuance of directives that specify the requirements that must be met in order to market devices in the EC. Both horizontal standards applicable to broad categories of products and vertical standards that are product specific will be used in demonstrating conformity with the requirements of the directives. Harmonized GMP requirements are one of the horizontal standards that will be applicable to medical devices.

In order to market devices in the EC once harmonization is achieved, device manufacturers will be required to demonstrate conformity with design and production requirements of the applicable EC directive. While the requirements of all directives for devices are not yet known, manufacturers who comply with the ISO 9001 standard for quality systems, including harmonized GMP requirements and other applicable

standards, will be able to declare conformity with both design and production requirements. Manufacturers may also demonstrate conformance through a combination of testing and quality programs. For most manufacturers, compliance with the ISO 9001 quality standard will be the most cost-effective and timely approach to marketing devices in the EC.

Updating the device CGMP regulations to make them comparable to the ISO 9001 standard for quality systems will serve to reduce a source of competitive disadvantage to U.S. manufacturers attempting to market devices in the EC once harmonization is achieved. In addition, unless FDA has device CGMP regulations comparable in requirement to the EC's harmonized GMP standard, FDA will be limited in its negotiations with the EC to develop mutual inspection agreements.

The changes in FDA's CGMP regulations that FDA is considering would improve the quality of medical devices manufactured and distributed in the U.S. or exported by assuring that all manufacturers design and manufacture devices under the controls of a total quality system. This is necessary to assure that only safe and effective devices are distributed in conformance with section 520(f) of the act.

V. Changes in Critical Device Concept

As a byproduct of the effort to update the device CGMP regulations to meet ISO 9001 requirements, FDA is considering whether the critical device terminology presently in the regulations should be eliminated, because of practical considerations, by including most of the critical device requirements in the general GMP text. FDA believes this could be done without reducing or significantly increasing the control requirements now applied by FDA, when considered appropriate, to all devices. In addition, the changes will alleviate significant problems that both FDA and industry have experienced in implementing the critical device portion of the GMP program.

In practice, most critical device requirements are duplicates of existing general requirements. For example, the device CGMP regulations require written procedures for accepting, sampling, testing, and inspecting all lots of critical components. Yet the CGMP regulations also require noncritical device manufacturers to sample, inspect, and test any component where deviations from component specifications could result in the device being unfit for its intended use. Establishing written procedures to

assure the uniform and consistent performance of such activities is considered GMP for all manufacturers.

The identification of critical components and operations has caused significant problems in terms of interpretation and FDA resource expenditures. Some 11 years after the device CGMP regulations became effective, the industry and the FDA field force still encounter difficulties in interpreting and implementing the terms, even though FDA has expended much time and resources on the subject in industry workshops and written guidance materials. In eliminating the critical component terminology, the concept that there are certain components whose application dictates special attention, will be maintained, but the requirements will be written in general terms and apply to all devices.

In addition to improving the implementation and enforcement of the device CGMP regulation, the agency believes that the changes being considered would better facilitate the development of new production methods and procedures.

VI. Device GMP Advisory Committee

Pursuant to section 520(f)(3) of the act, FDA has provided each member of the agency's Device GMP Advisory Committee with a copy of the report prepared by the GMP Work Group in

CDRH (Ref. 2). The report identifies the changes that the agency intends to consider making in the CGMP regulation for medical devices and the reasons for those changes.

FDA published in the *Federal Register* of April 25, 1990 (55 FR 17502), a notice announcing a meeting of the agency's Device GMP Advisory Committee on June 19 and 20, 1990. The meeting is being held to discuss the agency's intention to consider revising the device GMP regulations to obtain the comments of the Advisory Committee, and other interested parties in attendance, on the changes that the agency believes should be considered that are outlined in the CDRH GMP Work Group report, dated October 23, 1989, and discussed in this notice (Ref. 2).

VII. References

The following information has been placed on display in the Dockets Management Branch (address above) and may be reviewed by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. "Device Recalls: A Study of Quality Problems," U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Rockville, MD 20857, January 1990, FDA 90-4235.

2. Report of the GMP Workgroup, Center for Devices and Radiological Health, Food and Drug Administration, October 23, 1989 (unpublished).

3. ISO 9001—Quality Systems—Model for Quality Assurance in Design/Development, Production, Installation and Servicing, International Standards Organization.

4. ISO 9002—Quality Systems—Model for Quality Assurance in Production and Installation, International Standards Organization.

5. ISO 9003—Quality Systems—Model for Quality Assurance in Final Inspection and Test, International Standards Organization.

VIII. Submission of Information and Comments

Interested persons may, on or before September 13, 1990, submit to the Dockets Management Branch (address above) written information and comments regarding this advanced notice of proposed rulemaking. Two copies of the information and comments should be submitted, except that individuals may submit one copy. The information and comments are to be identified with the docket number found in brackets in the heading of this document. The information and comments submitted may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 12, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-14009 Filed 6-13-90; 10:58 am]

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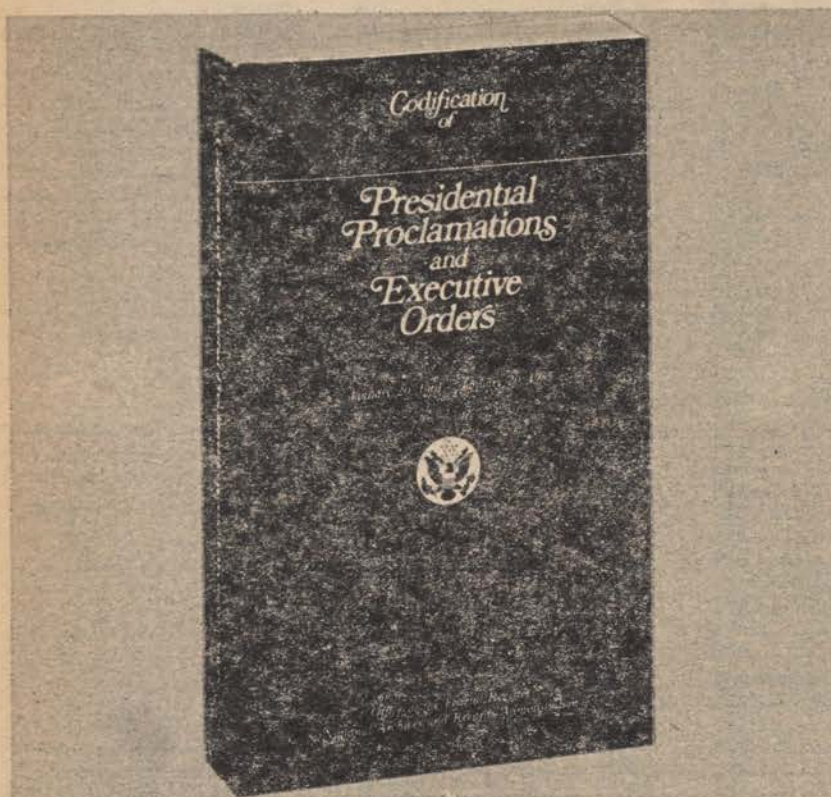
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